# Title 26—Internal Revenue

(This book contains part 1, §§1.61 to 1.139)

*Part*

# CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY (CONTINUED)

EDITORIAL NOTE: IRS published a document at 45 FR 6088, Jan. 25, 1980, deleting statutory sections from their regulations. In Chapter I cross-references to the deleted material have been changed to the corresponding sections of the IRS Code of 1954 or to the appropriate regulations sections. When either such change produced a redundancy, the cross-reference has been deleted. For further explanation, see 45 FR 20795, Mar. 31, 1980.

## SUBCHAPTER A—INCOME TAX (CONTINUED)



SUPPLEMENTARY PUBLICATIONS: *Internal Revenue Service Looseleaf Regulations System, Alcohol and Tobacco Tax Regulations,* and *Regulations Under Tax Conventions.*

EDITORIAL NOTE: Treasury Decision 6091, 19 FR 5167, Aug. 17, 1954, provides in part as follows:

PARAGRAPH 1. All regulations (including all Treasury decisions) prescribed by, or under authority duly delegated by, the Secretary of the Treasury, or jointly by the Secretary and the Commissioner of Internal Revenue, or by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, or jointly by the Commissioner of Internal Revenue and the Commissioner of Customs or the Commissioner of Narcotics with the approval of the Secretary of the Treasury, applicable under any provision of law in effect on the date of enactment of the Code, to the extent such provision of law is repealed by the Code, are hereby prescribed under and made applicable to the provisions of the Code corresponding to the provision of law so repealed insofar as any such regulation is not inconsistent with the Code. Such regulations shall become effective as regulations under the various provisions of the Code as of the dates the corresponding provisions of law are repealed by the Code, until superseded by regulations issued under the Code.

PAR. 2. With respect to any provision of the Code which depends for its application upon the promulgation of regulations or which is to be applied in such manner as may be prescribed by regulations, all instructions or rules in effect immediately prior to the enactment of the Code, to the extent such instructions or rules could be prescribed as regulations under authority of such provision of the Code, shall be applied as regulations under such provision insofar as such instructions or rules are not inconsistent with the Code. Such instructions or rules shall be applied as regulations under the applicable provision of the Code as of the date such provision takes effect.

PAR. 3. If any election made or other act done pursuant to any provision of the Internal Revenue Code of 1939 or prior internal revenue laws would (except for the enactment of the Code) be effective for any period subsequent to such enactment, and if corresponding provisions are contained in the Code, such election or other act shall be given the same effect under the corresponding provisions of the Code to the extent not inconsistent therewith. The term "act" includes, but is not limited to, an allocation, identification, declaration, agreement, option, waiver, relinquishment, or renunciation.

PAR. 4. The limits of the various internal revenue districts have not been changed by the enactment of the Code. Furthermore, delegations of authority made pursuant to the provisions of Reorganization Plan No. 26 of 1950 and Reorganization Plan No. 1 of 1952 (as well as redelegations thereunder), including those governing the authority of the Commissioner of Internal Revenue, the Regional Commissioners of Internal Revenue, or the District Directors of Internal Revenue, are applicable to the provisions of the Code to the extent consistent therewith.

# SUBCHAPTER A—INCOME TAX (CONTINUED)

## PART 1—INCOME TAXES (CONTINUED)

COMPUTATION OF TAXABLE INCOME

### Definition of Gross Income, Adjusted Gross Income, and Taxable Income



ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

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AUTHORITY: 26 U.S.C. 7805, unless otherwise noted.

Section 1.61–2T also issued under 26 U.S.C. 61.

Section 1.61–21 also issued under 26 U.S.C. 61.

Sections 1.62–1T and 1.62–2 also issued under 26 U.S.C. 62.

Section 1.66–4 also issued under 26 U.S.C. 66(c);

Sections 1.67–2T and 1.67–3T also issued under 26 U.S.C. 67(c).

Section 1.67–3 also issued under 26 U.S.C. 67(c).

Sections 1.72–4, 1.72–5, 1.72–6, 1.72–7, 1.72–8, and 1.72–11 also issued under 26 U.S.C. 72(c).

Section 1.101–7 also issued under 26 U.S.C. 101(d)(2)(B)(ii).

Section 1.103–10 also issued under 26 U.S.C. 103(b)(6).

Section 1.103A–2 also issued under 26 U.S.C. 103A(j).

Section 1.108–1 also issued under 26 U.S.C. 108(e)(8) and 108(e)(10(B).

Section 1.108–2 also issued under 26 U.S.C. 108.

Section 1.108–3 also issued under 26 U.S.C. 108, 267, and 1502.

Section 1.108–4 also issued under 26 U.S.C. 108.

Section 1.108–5 also issued under 26 U.S.C. 108.

Section 1.108(c)–1 also issued under the authority of 26 U.S.C. 108(d)(9).

Section 1.108(i)–0 also issued under 26 U.S.C. 108(i)(7) and 1502.

Section 1.108(i)–1 also issued under 26 U.S.C. 108(i)(7) and 1502.

Section 1.108(i)–2 also issued under 26 U.S.C. 108(i)(7).

Section 1.108(i)–2T also issued under 26 U.S.C. 108(i)(7).

Section 1.108(i)–3 also issued under 26 U.S.C. 108(i)(7) and 1502.

Section 1.110–1 also issued under 26 U.S.C. 110(d).

Sections 1.132–0 through 1.132–8T also issued under 26 U.S.C. 132.

SOURCE: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted.

COMPUTATION OF TAXABLE INCOME

DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, AND TAXABLE INCOME

### § 1.61–1 Gross income.

(a) *General definition.* Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash. Section 61 lists the more common items of gross income for purposes of illustration. For purposes of further illustration, § 1.61–14 mentions several miscellaneous items of gross income not listed specifically in section 61. Gross income, however, is not limited to the items so enumerated.

(b) *Cross references.* Cross references to other provisions of the Code are to be found throughout the regulations under section 61. The purpose of these cross references is to direct attention to the more common items which are included in or excluded from gross income entirely, or treated in some special manner. To the extent that another section of the Code or of the regulations thereunder, provides specific treatment for any item of income, such other provision shall apply notwithstanding section 61 and the regulations thereunder. The cross references do not cover all possible items.

(1) For examples of items specifically included in gross income, see Part II (section 71 and following), Subchapter B, Chapter 1 of the Code.

(2) For examples of items specifically excluded from gross income, see part III (section 101 and following), Subchapter B, Chapter 1 of the Code.

(3) For general rules as to the taxable year for which an item is to be included in gross income, see section 451 and the regulations thereunder.

### § 1.61–2 Compensation for services, including fees, commissions, and similar items.

(a) *In general.* (1) Wages, salaries, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses (including Christmas bonuses), termination or severance pay, rewards, jury fees, marriage fees and other contributions received by a clergyman for services, pay of persons in the military or naval forces of the United States, retired pay of employees, pensions, and retirement allowances are income to the recipients unless excluded by law. Several special rules apply to members of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service of the United States; see paragraph (b) of this section.

(2) The Code provides special rules including the following items in gross income:

(i) Distributions from employees' trusts, see sections 72, 402, and 403, and the regulations thereunder;

(ii) Compensation for child's services (in child's gross income), see section 73 and the regulations thereunder;

(iii) Prizes and awards, see section 74 and the regulations thereunder.

(3) Similarly, the Code provides special rules excluding the following items from gross income in whole or in part:

(i) Gifts, see section 102 and the regulations thereunder;

(ii) Compensation for injuries or sickness, see section 104 and the regulations thereunder;

(iii) Amounts received under accident and health plans, see section 105 and the regulations thereunder;

(iv) Scholarship and fellowship grants, see section 117 and the regulations thereunder;

(v) Miscellaneous items, see section 122.

(b) *Members of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service.* (1) Subsistence and uniform allowances granted commissioned officers, chief warrant officers, warrant officers, and enlisted personnel of the Armed Forces, National Oceanic and Atmospheric Administration, and Public

Health Service of the United States, and amounts received by them as commutation of quarters, are excluded from gross income. Similarly, the value of quarters or subsistence furnished to such persons is excluded from gross income.

(2) For purposes of this section, quarters or subsistence includes the following allowances for expenses incurred after December 31, 1993, by members of the Armed Forces, members of the commissioned corps of the National Oceanic and Atmospheric Administration, and members of the commissioned corps of the Public Health Service, to the extent that the allowances are not otherwise excluded from gross income under another provision of the Internal Revenue Code: a dislocation allowance, authorized by 37 U.S.C. 407; a temporary lodging allowance, authorized by 37 U.S.C. 405; a temporary lodging expense, authorized by 37 U.S.C. 404a; and a move-in housing allowance, authorized by 37 U.S.C. 405. No deduction is allowed under this chapter for any expenses reimbursed by such excluded allowances. For the exclusion from gross income of—

(i) Disability pensions, see section 104(a)(4) and the regulations thereunder;

(ii) Miscellaneous items, see section 122.

(3) The per diem or actual expense allowance, the monetary allowance in lieu of transportation, and the mileage allowance received by members of the Armed Forces, National Oceanic and Atmospheric Administration, and the Public Health Service, while in a travel status or on temporary duty away from their permanent stations, are included in their gross income except to the extent excluded under the accountable plan provisions of §1.62–2.

(c) *Payment to charitable, etc., organization on behalf of person rendering services.* The value of services is not includible in gross income when such services are rendered directly and gratuitously to an organization described in section 170(c). Where, however, pursuant to an agreement or understanding, services are rendered to a person for the benefit of an organization described in section 170(c) and an amount for such services is paid to such organization by the person to whom the services are rendered, the amount so paid constitutes income to the person performing the services.

(d) *Compensation paid other than in cash*—(1) *In general.* Except as otherwise provided in paragraph (d)(6)(i) of this section (relating to certain property transferred after June 30, 1969), if services are paid for in property, the fair market value of the property taken in payment must be included in income as compensation. If services are paid for in exchange for other services, the fair market value of such other services taken in payment must be included in income as compensation. If the services are rendered at a stipulated price, such price will be presumed to be the fair market value of the compensation received in the absence of evidence to the contrary. For special rules relating to certain options received as compensation, see §§1.61–15, 1.83–7, and section 421 and the regulations thereunder. For special rules relating to premiums paid by an employer for an annuity contract which is not subject to section 403(a), see section 403(c) and the regulations thereunder and §1.83–8(a). For special rules relating to contributions made to an employees' trust which is not exempt under section 501, see section 402(b) and the regulations thereunder and §1.83–8(a).

(2) *Property transferred to employee or independent contractor.* (i) Except as otherwise provided in section 421 and the regulations thereunder and §1.61–15 (relating to stock options), and paragraph (d)(6)(i) of this section, if property is transferred by an employer to an employee or if property is transferred to an independent contractor, as compensation for services, for an amount less than its fair market value, then regardless of whether the transfer is in the form of a sale or exchange, the difference between the amount paid for the property and the amount of its fair market value at the time of the transfer is compensation and shall be included in the gross income of the employee or independent contractor. In computing the gain or loss from the subsequent sale of such property, its basis shall be the amount paid for the property increased by the amount of

such difference included in gross income

(ii)(A) *Cost of life insurance on the life of the employee.* Generally, life insurance premiums paid by an employer on the life of his employee where the proceeds of such insurance are payable to the beneficiary of such employee are part of the gross income of the employee. However, the amount includible in the employee's gross income is determined with regard to the provisions of section 403 and the regulations thereunder in the case of an individual contract issued after December 31, 1962, or a group contract, which provides incidental life insurance protection and which satisfies the requirements of section 401(g) and §1.401–9, relating to the nontransferability of annuity contracts. For example, if an employee or independent contractor is the owner (as defined in §1.61–22(c)(1)) of a life insurance contract and the payments with regard to such contract are not split-dollar loans under §1.7872–15(b)(1), the employee or independent contractor must include in income the amount of any such payments by the employer or service recipient with respect to such contract during any year to the extent that the employee's or independent contractor's rights to the life insurance contract are substantially vested (within the meaning of §1.83–3(b)). This result is the same regardless of whether the employee or independent contractor has at all times been the owner of the life insurance contract or the contract previously has been owned by the employer or service recipient as part of a split-dollar life insurance arrangement (as defined in §1.61–22(b)(1) or (2)) and was transferred by the employer or service recipient to the employee or independent contractor under §1.61–22(g). For the special rules relating to the includibility in an employee's gross income of an amount equal to the cost of certain group term life insurance on the employee's life which is carried directly or indirectly by his employer, see section 79 and the regulations thereunder. For special rules relating to the exclusion of contributions by an employer to accident and health plans for the employee, see section 106 and the regulations thereunder.

(B) *Cost of group-term life insurance on the life of an individual other than an employee.* The cost (determined under paragraph (d)(2) of §1.79–3) of group-term life insurance on the life of an individual other than an employee (such as the spouse or dependent of the employee) provided in connection with the performance of services by the employee is includible in the gross income of the employee.

(3) *Meals and living quarters.* The value of living quarters or meals which an employee receives in addition to his salary constitutes gross income unless they are furnished for the convenience of the employer and meet the conditions specified in section 119 and the regulations thereunder. For the treatment of rental value of parsonages or rental allowance paid to ministers, see section 107 and the regulations thereunder; for the treatment of statutory subsistence allowances received by police, see section 120 and the regulations thereunder.

(4) *Stock and notes transferred to employee or independent contractor.* Except as otherwise provided by section 421 and the regulations thereunder and §1.61–15 (relating to stock options), and paragraph (d)(6)(i) of this section, if a corporation transfers its own stock to an employee or independent contractor as compensation for services, the fair market value of the stock at the time of transfer shall be included in the gross income of the employee or independent contractor. Notes or other evidences of indebtedness received in payment for services constitute income in the amount of their fair market value at the time of the transfer. A taxpayer receiving as compensation a note regarded as good for its face value at maturity, but not bearing interest, shall treat as income as of the time of receipt its fair discounted value computed at the prevailing rate. As payments are received on such a note, there shall be included in income that portion of each payment which represents the proportionate part of the discount originally taken on the entire note.

(5) *Property transferred on or before June 30, 1969, subject to restrictions.* Notwithstanding paragraph (d) (1), (2), or (4) of this section, if any property is

transferred after September 24, 1959, by an employer to an employee or independent contractor as compensation for services, and such property is subject to a restriction which has a significant effect on its value at the time of transfer, the rules of §1.421–6(d)(2) shall apply in determining the time and the amount of compensation to be included in the gross income of the employee or independent contractor. This (5) is also applicable to transfers subject to a restriction which has a significant effect on its value at the time of transfer and to which §1.83–8(b) (relating to transitional rules with respect to transfers of restricted property) applies. For special rules relating to options to purchase stock or other property which are issued as compensation for services, see §1.61–15 and section 421 and the regulations thereunder.

(6) *Certain property transferred, premiums paid, and contributions made in connection with the performance of services after June 30, 1969*—(i) *Exception.* Paragraph (d) (1), (2), (4), and (5) of this section and §1.61–15 do not apply to the transfer of property (as defined in §1.83–3(e)) after June 30, 1969, unless §1.83–8 (relating to the applicability of section 83 and transitional rules) applies. If section 83 applies to a transfer of property, and the property is not subject to a restriction that has a significant effect on the fair market value of such property, then the rules contained in paragraph (d) (1), (2), and (4) of this section and §1.61–15 shall also apply to such transfer to the extent such rules are not inconsistent with section 83.

(ii) *Cross references.* For rules relating to premiums paid by an employer for an annuity contract which is not subject to section 403(a), see section 403(c) and the regulations thereunder. For rules relating to contributions made to an employees' trust which is not exempt under section 501(a), see section 402(b) and the regulations thereunder.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6696, 28 FR 13450, Dec. 12, 1963; T.D. 6856, 30 FR 13316, Oct. 20, 1965; T.D. 7544, 43 FR 31913, July 24, 1978; T.D. 7623, 44 FR 28800, May 17, 1979; T.D. 8256, 54 FR 28582, July 6, 1989; T.D. 8607, 60 FR 40076, Aug. 7, 1995; T.D. 9092, 68 FR 54344, Sept. 17, 2003]

### § 1.61–2T Taxation of fringe benefits—1985 through 1988 (temporary).

(a) *Fringe benefits*—(1) *In general.* Section 61(a)(1) provides that, except as otherwise provided in subtitle A, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. Examples of fringe benefits include: an employer-provided automobile, a flight on an employer-provided aircraft, an employer-provided free or discounted commercial airline flight, an employer-provided vacation, and employer-provided discount on property or services, and emkployer-provided membership in a country club or other social club, and an employer-provided ticket to an entertainment or sporting event.

(2) *Fringe benefits excluded from income.* To the extent that a particular fringe benefit is specifically excluded from gross income pursuant to another section of subtitle A, that section shall govern the treatment of the fringe benefit. Thus, if the requirements of the governing section are satisfied, the fringe benefits may be excludable from gross income. Examples of excludable fringe benefits are qualified tuition reductions provided to an employee (section 177(d)); meals and lodging furnished to an employee for the convenience of the employer (section 119); and benefits provided under a dependent care assistance program (section 129). Similarly, the value of the use by an employee of an employer-provided vehicle or a flight provided to an employee on an employer-provided aircraft may be excludable from income under section 105 (because, for example, the trnsportation is provided for medical reasons) if and to the extent that the requirements of that section are satisfied. Section 61 and the regulations thereunder shall apply, however, to the extent that they are not inconsistent with such other section. For example, many fringe benefits specifically addressed in other sections of subtitle A are excluded from gross income only to the extent that they do not exceed specific dollar or percentage limits, or only if certain other requirements are met. If the limits are exceeded or the requirements are not met, some or all of the fringe benefit may be

includible in gross income. See paragraph (b)(3) of this section.

(3) *Compensation for services.* A fringe benefit provided in connection with the performance of services shall be considered to have been provided as compensation for servcies. Refraining from the performance of services (such as pursuant to a covenant not to compete) is deemed to be the performance of services for purposes of this section.

(4) *Recipient of a fringe benefit*—(i) *Definition.* A fringe benefit is included in the income of the ''recipient'' of the fringe benefit. The recipient of a fringe benefit is the person performing the services in connection with which the fringe benefit is provided. Thus, a person may be considered to be a recipient, even though that person did not actually receive the fringe benefit. For example, a fringe benefit provided to any person is connection with the performance of services by another person is considered to have been provided to the person who performs the services and not the person who receives the fringe benefit. In addition, if a fringe benefit is provided to a person, but taxable to a second person as the recipient, such benefit is referred to as provided to the second person and use by the first person is considered use by the second person. For example, provision of an automobile to an employee's spouse by the employer is taxable to the employee as the recipient. The automobile is referred to as available to the employee and use by the employee's spouse is considered use by the employee.

(ii) *Recipient may be other than an employee.* The recipient of a fringe benefit need not be an employee of the provider of the fringe benefit, but may be a partner, director, or an independent contractor. For convenience, the term ''employee'' includes a reference to any recipient of a fringe benefit, unless otherwise specifically provided in this section.

(5) *Provider of a fringe benefit.* The ''provider'' of a fringe benefit is that person for whom the services are performed, regardless of whether that person actually provides the fringe benefit to the recipient. The provider of a fringe benefit need not be the employer of the recipient of the fringe benefit, but may be, for example, a client or customer of an independent contractor. For convenience, the term ''employer'' includes a reference to any provider of a fringe benefit, unless otherwise specifically provided in this section.

(6) *Effective date.* This section is effective from January 1, 1985, to December 31, 1988, with respect to fringe benefits furnished before January 1, 1989. No inference may be drawn from the promulgation or terms of this section concerning the application of law in effect prior to January 1, 1985.

(b) *Valuation of fringe benefits*—(1) *In general.* An employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of (i) the amount, if any, paid for the benefit, and (ii) the amount, if any, specifically excluded from gross income by some other section of subtitle A. Therefore, for example, if the employee pays fair market value for what is received, no amount is includible in the gross income of the employee.

(2) *Fair market value.* In general, fair market value is determined on the basis of all the facts and circumstances. Specifically, the fair market value of a fringe benefit is that amount a (hypothetical person would have to pay a hypothetical third party to obtain (*i.e.*, purchase or lease) the particular fringe benefit. Thus, for example, the effect of any special relationship that may exist between the employer and the employee must be disregarded. This also means that an employee's subjective perception of the value of a fringe benefit is not relevant to the determination of a fringe benefit's fair market value. In addition, the cost incurred by the employer is not determinative of the fair market value of the fringe benefit. For special rules relating to the valuation of certain fringe benefits, see paragraph (c) of this section.

(3) *Exclusion from income based on cost.* If a statutory exclusion phrased in terms of cost applies to the provision of a fringe benefit, section 61 does not require the inclusion in the recipient's gross income of the difference between

the fair market value and the excludable cost of that fringe benefit. For example, section 129 provides an exclusion from an employee's gross income for amounts paid or incurred by an employer to provide dependent care assistance to employees. Even if the fair market value of the dependent care assistance exceeds the employer's cost, the excess is not subject to inclusion under section 61 and this section. If the statutory cost exclusion is a limited amount, however, then the fair market value of the fringe benefit attributable to any excess cost is subject to inclusion.

(4) *Fair market value of the availability of an employer-provided vehicle.* If the vehicle special valuation rules of paragraph (d), (e), or (f) of this section are not used by a taxpayer entitled to use such rules, the value of the availability of an employer-provided vehicle is determined under the general valuation principles set forth in this section. In general, such valuation must be determined by reference to the cost to a hypothetical person of leasing from a hypothetical third party the same or comparable vehicle on the same or comparable terms in the geographic area in which the vehicle is available for use. Unless the employee can substantiate that the same or comparable vehicle could have been leased on a cents-per-mile basis, the value of the availability of the vehicle cannot be determined by reference to a cents-per-mile rate applied to the number of miles the vehicle is driven. An example of a comparable lease term is the amount of time that the vehicle is available to the employee for use, e.g., a one-year period.

(5) *Fair market value of a flight on an employer-provided aircraft.* If the noncommercial flight special valuation rule of paragraph (g) of this section is not used (or is not properly used) by a taxpayer entitled to use such rule, the value of a flight on an employer-provided aircraft is determined under the general valuation principles set forth in this section. An example of how the general valuation principles would apply is that if an employee whose flight is primarily personal controls the use of an aircraft with respect to such flight, such flight is valued by reference to how much it would cost a hypothetical person to charter the same or comparable aircraft for the same or comparable flight. The cost to charter the aircraft must be allocated among all employees on board the aircraft based on all the facts and circumstances, including which employees controlled the use of the aircraft. Notwithstanding the allocation required by the preceding sentence, no additional amount shall be included in the income of any employee whose flight is properly valued under the special valuation rule of paragraph (g) of this section.

(c) *Special valuation rules*—(1) *In general.* Paragraphs (d) through (j) of this section provide special valuation rules that may be used under certain circumstances for certain commonly provided fringe benefits. Paragraph (d) provides a lease valuation rule relating to employer-provided automobiles. Paragraph (e) provides a cents-per-mile valuation rule relating to employer-provided vehicles. Paragraph (f) provides a commuting valuation rule relating to employer-provided vehicles. Paragraph (g) provides a flight valuation rule relating to flights on employer-provided aircraft. Paragraph (h) provides a flight valuation rule relating to flights on commercial airlines. Paragraph (i) is reserved. Paragraph (j) provides a meal valuation rule relating to employer-operated eating facilities for employees. For general rules relating to the valuation of fringe benefits not eligible for valuation under the special valuation rules, see paragraph (d) of this section.

(2) *Use of the special valuation rules*—(i) *In general.* The Special valuation rules may be used for income, employment tax, and reporting purposes. Use of any of the special valuation rules is optional. An employer need not use the same vehicle special valuation rule for all vehicles provided to all employees. For example, an employer may use the automobile lease valuation rule for automobiles provided to some employees, and the commuting and vehicle cents-per-mile valuation rules for automobiles provided to other employees. Except as otherwise provided, however, if either the commercial flight valuation rule or the noncommercial flight

valuation rule is used, such rule must be used by an employer to value all flights taken by employees in a calendar year. Effective January 1, 1986, if an employer uses one of the special rules to value the benefit provided to an employee, the employee may not use another special rule to value that benefit. The employee may, however, use general valuation rules based on facts and circumstances (see paragraph (b) of this section). Effective January 1, 1986, an employee may only use a special valuation rule if the employer uses the rule. If a special rule is used, it must be used for all purposes. If an employer properly uses a special rule and the employee uses the special rule, the employee must include in gross income the amount determined by the employer under the special rule less any amount reimbursed by the employee to the employer. The employer and the employee may use the special rules to determine the amount of the reimbursement due the employer by the employee. If an employer properly uses a special rule and properly determines the amount of an employee's working condition fringe under section 132 and §1.132–1T (under the general rule or under a special rule), and the employee uses the special valuation rule, the employee must include in gross income the amount determined by the employer less any amount reimbursed by the employee to the employer.

(ii) *Transitional rules*—(A) *Use of vehicle special valuation rules for 1985 and 1986*. For purposes of valuing the use or availability of a vehicle, the consistency rules provided in paragraphs (d)(6) and (e)(5) of this section (relating to the automobile lease valuation rule and the vehicle cents-per-mile valuation rule, respectively) apply for 1987 and thereafter. Therefore, for 1985 and 1986 an employer (and employee, subject to paragraph (c)(2)(i) of this section) may use any applicable special valuation rule (or no special valuation rule) to value the use or availability of a vehicle, subject to paragraph (c)(2)(ii)(B) of this section.

(B) *Consistency Rules for 1985 and 1986*. If an employer uses the automobile lease valuation rule of paragraph (d) of this section in 1985 or 1986 with respect to an automobile, such rule must be used for the entire calendar year with respect to the automobile except for any period during which the commuting valuation rule of paragraph (f) of this section is properly used. If an employer uses the vehicle cents-per-mile valuation rule of pararaph (e) of this section in 1985 or 1986 with respect to a vehicle, such rule must be used for the entire calendar year with respect to the vehicle except for any period during which the commuting valuation rule of paragraph (f) of this section is properly used. The rules of this paragraph (c)(2)(ii)(B) also apply to employees using the special valuation rules of paragraphs (d) or (e) of this section.

(C) *Employee's use of special valuation rules for 1985*. An employee may use a special valuation rule (other than the rule in paragraph (e) of this section relating to the vehicle cents-per-mile valuation rule) during 1985 even if the employer does not use the same special valuation rule during 1985. An employee's use of a special valuation rule in 1986 and thereafter must be consistent with his employer's use of the rule as required under paragraph (c)(2)(i) of this section.

(D) *Examples*. The following examples illustrate the rules of paragraph (c)(2)(ii) of this section:

*Example 1*. Assume that an employer properly uses the automobile lease valuation rule in 1985. The employer may use the vehicle cents-per-mile valuation rule in 1986 if the requirements of the vehicle cents-per-mile valuation rule are satisfied.

*Example 2*. Assume that an employer does not use a special valuation rule to value the availability of an automobile in 1985. The employer may use any of the special valuation rules in 1986 if the requirements of the rule chosen are satisfied. The same applies for 1987.

*Example 3*. Assume that an employer properly uses the vehicle cents-per-mile valuation rule in 1985. The employer may continue to use to the rule or use any of the other special valuation rules to value the benefit provided in 1986 if the requirements of the rule chosen are satisfied. Alternatively, the employer may use none of the special valuation rules in 1986 but use any of the rules in 1987 if the requirements of the rule chosen are satisfied.

*Example 4*. Assume that an employee properly uses the automobile lease valuation rule in 1985. In 1986 and thereafter the employee may use a special valuation rule only if the employee's employer uses the same special valuation rule. The employee may use general valuation principles to value the benefit provided in 1986 and thereafter.

(3) *Election to use the special valuation rules*—A particular special valuation rule is deemed to have been elected by the employer (and, if applicable, by the employee), if the employer (and, if applicable, the employee) determines the value of the fringe benefit provided by applying the special valuation rule and treats such value as the fair market value of the fringe benefit for income, employment tax, and reporting purposes. Neither the employer nor the employee is required to notify the Internal Revenue Service of the election.

(4) *Application of section 414 to employers*. For purposes of paragraphs (c) through (j) of this section, except as otherwise provided therein, the term "employer" includes all entities required to be treated as a single employer under section 414 (b), (c), or (m).

(5) *Valuation formulas contained in the special valuation rules*. The valuation formulas contained in the special valuation rules are provided only for use in connection with such rules. Thus, when a special valuation rule is properly applied to a fringe benefit, the Commissioner will accept the value calculated pursuant to the rule as the fair market value of that fringe benefit. However, when a special valuation rule is not properly applied to a fringe benefit (see, for example, paragraph (g)(11) of this section), or when a special valuation rule is not used to value a fringe benefit by a taxpayer entitled to use the rule, the fair market value of that fringe benefit may not be determined by reference to any value calculated under any special valuation rule. Under the circumstances described in the preceding sentence, the fair market value of the fringe benefit must be determined pursuant to paragraph (b) of this section.

(6) *Modification of the special valuation rules*. The Commissioner may, if he deems it necessary, add, delete, or modify the special valuation rules, including the valuation formulas contained herein, on a prospective basis.

(7) *Special Accounting Period*. If the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B., August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), benefits which are deemed provided in a subsequent calendar year pursuant to such rule are considered as provided in such subsequent calendar year for purposes of the special valuation rules. Thus, if a particular special valuation rule is in effect for a calendar year, it applies to benefits deemed provided during such calendar year under the special accounting rule.

(d) *Automobile lease valuation rule*—(1) *In general*—(i) *Annual Lease Value*. Under the special valuation rule of this paragraph (d), if an employer provides an employee with an automobile that is available to the employee for an entire calendar year, the value of the benefit provided in the Annual Lease Value (determined under paragraph (d)(2) of this section) of that automobile. Except as otherwise provided, for an automobile that is available to an employee for less than an entire calendar year, the value of the benefit provided is either a pro-rated Annual Lease Value or the Daily Lease Value (as defined in paragraph (d)(4) of this section), whichever is applicable. Absent any statutory exclusion relating to the employer-provided automobile (see, for example, section 132(a)(3) and §1.132–5T(b)), the amount of the Annual Lease Value (or a pro-rated Annual Lease Value or the Daily Lease Value, as applicable) is included in the gross income of the employee.

(ii) *Definition of automobile*. For purposes of this paragraph (d), the term "automobile" means any four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways.

(2) *Calculation of Annual Lease Value*—(i) *In general*. The Annual Lease Value of a particular automobile is calculated as follows:

(A) Determine the fair market value of the automobile as of the first date on which the automobile is made available to any employee of the employer for personal use. For an automobile first made available to any employee for personal use prior to January 1, 1985, determine the fair market value as of January 1, 1985. For rules relating to determination of the fair market value of an automobile for purposes of this paragraph (d), see paragraph (d)(5) of this section.

(B) Select the dollar range in column 1 of the Annual Lease Value Table, set forth in paragraph (d)(2)(iii) of this section, corresponding to the fair market value of the automobile. Except as otherwise provided in paragraphs (d)(2) (iv) and (v) of this section, the Annual Lease Value for each year of availability of the automobile is the corresponding amount in column 2 of the Table.

(ii) *Use by employee only in 1985.* If the employee, but not the employer, is using the special rule of this paragraph (d), the employee may calculate the Annual Lease Value in the same manner as described in paragraph (d)(2)(i)(A) of this section, except that the fair market value of the automobile is determined as of the first date on which the automobile is made available to the employee for personal use or, for an automobile made available to the employee for personal use prior to January 1, 1985, by determining the fair market value as of January 1, 1985. If the employer is also using the special rule of this paragraph (d), however, then the employee to whom the automobile is made available must use the special rule, if at all, by using the Annual Lease Value calculated by the employer. The rules of this paragraph (d)(2)(ii) apply only for 1985.

(iii) *Annual Lease Value Table.*

| Automobile fair market value (1) | Annual lease value (2) |
|---|---|
| $0 to $999 | $600 |
| $1,000 to $1,999 | 850 |
| $2,000 to $2,999 | 1,100 |
| $3,000 to $3,999 | 1,350 |
| $4,000 to $4,999 | 1,600 |
| $5,000 to $5,999 | 1,850 |
| $6,000 to $6,999 | 2,100 |
| $7,000 to $7,999 | 2,350 |
| $8,000 to $8,999 | 2,600 |
| $9,000 to $9,999 | 2,850 |
| $10,000 to $10,999 | 3,100 |
| $11,000 to $11,999 | 3,350 |
| $12,000 to $12,999 | 3,600 |
| $13,000 to $13,999 | 3,850 |
| $14,000 to $14,999 | 4,100 |
| $15,000 to $15,999 | 4,350 |
| $16,000 to $16,999 | 4,600 |
| $17,000 to $17,999 | 4,850 |
| $18,000 to $18,999 | 5,100 |
| $19,000 to $19,999 | 5,350 |
| $20,000 to $20,999 | 5,600 |
| $21,000 to $21,999 | 5,580 |
| $22,000 to $22,999 | 6,100 |
| $23,000 to $23,999 | 6,350 |
| $24,000 to $24,999 | 6,600 |
| $25,000 to $25,999 | 6,850 |
| $26,000 to $27,999 | 7,250 |
| $28,000 to $29,999 | 7,750 |
| $30,000 to $31,999 | 8,250 |
| $32,000 to $33,999 | 8,750 |
| $34,000 to $35,999 | 9,250 |
| $36,000 to $37,999 | 9,750 |
| $38,000 to $39,999 | 10,250 |
| $40,000 to $41,999 | 10,750 |
| $42,000 to $43,999 | 11,250 |
| $44,000 to $45,999 | 11,750 |
| $46,000 to $47,999 | 12,250 |
| $48,000 to $49,999 | 12,750 |
| $50,000 to $51,999 | 13,250 |
| $52,000 to $53,999 | 13,750 |
| $54,000 to $55,999 | 14,250 |
| $56,000 to $57,999 | 14,750 |
| $58,000 to $59,999 | 15,250 |

For vehicles having a fair market value in excess of $59,999, the Annual Lease Value is equal to: (.25 × the fair market value of the automobile) + $500.

(iv) *Recalculation of annual lease value.* The Annual Lease Values determined under the rules of this paragraph (d) are based on a four-year lease term. Therefore, except as otherwise provided in paragraph (d)(2)(v) of this section, the Annual Lease Value calculated by applying paragraph (d)(2) (i) or (ii) of this section shall remain in effect for the period that begins with the first date the special valuation rule of paragraph (d) of this section is applied by the employer to the automobile and ends on December 31 of the fourth full calendar year following that date. The Annual Lease Value for each subsequent four-year period is calculated by determining the fair market value of the automobile as of the January 1 following the period described in the previous sentence and selecting the amount in column 2 of the Annual Lease Value Table corresponding to the appropriate dollar range in column 1 of the Table. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B., August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may calculate the Annual Lease Value for each subsequent four-year period as of the beginning of the special accounting period that begins immediately prior to the January 1 described in the previous sentence. For example, assume that pursuant to Announcement 85–113, an employer uses the special accounting rule. Assume further that beginning on November 1, 1985, the special accounting period is November 1 to October 31 and that the employer elects to use the special valuation rule of this paragraph (d) as of January 1, 1985. The employer may recalculate the Annual Lease Value as of November 1, 1988, rather than as of January 1, 1989.

(v) *Transfer of the automobile to another employee.* Unless the primary purpose of the transfer is to reduce Federal taxes, if an employer transfers an automobile from one employee to another employee, the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of January 1 of the year of transfer. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B., August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of the beginning of the special accounting period in which the transfer occurs. If the employer does not recalculate the Annual Lease Value, and the employee to whom the automobile is transferred uses the special valuation rule, the employee may not recalculate the Annual Lease Value.

(3) *Services included in, or excluded from, the Annual Lease Value Table*—(i) *Maintenance and insurance included.* The Annual Lease Values contained in the Annual Lease Value Table include the fair market value of maintenance of, and insurance for, the automobile. Neither an employer nor an employee may reduce the Annual Lease Value by the fair market value of any service included in the Annual Lease Value that is not provided by the employer, such as reducing the Annual Lease Value by the fair market value of a maintenance service contract or insurance. An employer or employee may take into account the services actually provided with respect to the automobile by valuing the availability of the automobile under the general valuation rules of paragraph (b) of this section.

(ii) *Fuel excluded*—(A) *In general.* The Annual Lease Values do not include the fair market value of fuel provided by the employer, regardless of whether fuel is provided in kind or its cost is reimbursed by or charged to the employer.

(B) *Valuation of fuel provided in kind.* The provision of fuel in kind may be valued at fair market value based on all the facts and circumstances or, in the alternative, it may be valued at 5.5 cents per mile for all miles driven by the employee. However, the provision of fuel in kind may not be valued at 5.5 cents per mile for miles driven outside the United States, Canada, and Mexico. For purposes of this section, the United States includes the United States and its territories.

(C) *Valuation of fuel where cost reimbursed by or charged to employer.* The fair market value of fuel, the cost of which is reimbursed by or charged to an employer, is generally the amount of the actual reimbursement or the amount charged, provided the purchase of the fuel is at arm's length. If an employer with a fleet of at least 20 automobiles that meet the requirements of paragraph (d)(5)(v)(C) of this section reimburses employees for the cost of fuel or allows employees to charge the employer for the cost of the fuel, however, the fair market value of fuel provided to those automobiles may be determined by reference to the employer's fleet-average cents-per-mile fuel cost. The fleet-average cents-per-mile fuel cost in equal to the fleet-average per-gallon fuel cost divided by the fleet-average miles-per-gallon rate. The averages described in the preceding sentence must be determined by averaging the per-gallon fuel costs and miles-per-gallon rates of a representative sample of the automobiles in the fleet equal to the greater of ten percent of the automobiles in the fleet or 20 automobiles for a representative period, such as a two month period.

(iii) *All other services excluded.* The fair market value of any service not specifically identified in paragraph (d)(3)(i) of this section that is provided by the employer with respect to an automobile (such as the services of a chauffeur) must be added to the Annual Lease Value of the automobile in determining the fair market value of the benefit provided.

(4) *Availability of an automobile for less than an entire calendar year*—(i) *Pro-rated Annual Lease Value used for continuous availability of 30 or more days.* Except as otherwise provided in paragraph (d)(4)(iv) of this section, for periods of continuous availability of 30 or more days, but less than an entire calendar year, the value of the availability of the employer-provided automobile is the pro-rated Annual Lease Value. The pro-rated Annual Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is the number of days of availability and the denominator of which is 365.

(ii) *Daily Lease Value used for continuous availability of less than 30 days.* Except as otherwise provided in paragraph (d)(4)(iii) of this section, for periods of continuous availability of one or more but less than 30 days, the value of the availability of the employer-provided automobile is the Daily Lease Value. The Daily Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is four times the number of days of availability and the denominator of which is 365.

(iii) *Election to treat all periods as periods of at least 30 days.* A pro-rated Annual Lease Value may be applied with respect to a period of continuous availability of less than 30 days, by treating the automobile as if it had been available for 30 days, if to do so would result in a lower valuation than applying the Daily Lease Value to the shorter period of actual availability.

(iv) *Periods of unavailability*—(A) *General rule.* In general, a pro-rated Annual Lease Value (as provided in paragraph (d)(4)(i) of this section) is used to value the availability of an employer-provided automobile when the automobile is available to an employee for a period of continuous availability of at least 30 days but less than the entire calendar year. Neither an employer nor an employee may use a pro-rated Annual Lease Value when the reduction of Federal taxes is the primary reason the automobile is unavailable to an employee during the calendar year.

(B) *Unavailability for personal reasons of the employee.* If an automobile is unavailable to an employee because of personal reasons of the employee, such as while the employee is on vacation, a pro-rated Annual Lease Value may not be used. For example, assume an automobile is available to an employee during the first five months of the year and during the last five months of the year. Assume further that the period of unavailability occurs because the employee is on vacation. The Annual Lease Value, if it is applied, must be applied with respect to the entire 12 month period. The Annual Lease Value may not be pro-rated to take into account the two-month period of unavailability.

(5) *Fair market value*—(i) *In general.* For purposes of determining the Annual Lease Value of an automobile under the Annual Lease Value Table, the fair market value of an automobile is that amount a hypothetical person would have to pay a hypothetical third party to purchase the particular automobile provided. Thus, for example, any special relationship that may exist between the employee and the employer must be disregarded. Also, the employee's subjective perception of the value of the automobile is not relevant to the determination of the automobile's fair market value. In addition, except as provided in paragraph (d)(5)(ii) of this section, the cost incurred by the employer of either purchasing of leasing the automobile is not determinative of the fair market value of the automobile.

(ii) *Safe-harbor valuation rule.* For purposes of calculating the Annual Lease Value of an automobile under this paragraph (d), the safe-harbor value of the automobile may be used as the fair market value of the automobile For an automobile owned by the employer, the safe-harbor value of the automobile is the employer's cost of purchasing the automobile, provided the purchase is made at arm's length. For an automobile leased by the employer, the safe-harbor value of the automobile is the value determined under paragraph (d)(5)(iii) of this section.

(iii) *Use of nationally recognized pricing guides.* The fair market value of an automobile that is (A) provided to an employee prior to January 1, 1985, (B) being revalued pursuant to paragraphs (d)(2) (iv) or (v) of this section, or (C) is a leased automobile being valued pursuant to paragraph (d)(5)(ii) of this section, may be determined by using the retail value of such automobile as reported in a nationally recognized publication that regularly reports new or used automobile retail values, whichever is applicable. The values contained in (and obtained from) the publication must be reasonable with respect to the automobile being valued.

(iv) *Fair market value of special equipment*—(A) *Certain equipment excluded.* The fair market value of an automobile does not include the fair market value of any telephone or any specialized equipment that is added to or carried in the automobile if the presence of such equipment is necessitated by, and attributable to, the business needs of the employer.

(B) *Use of specialized equipment outside of employer's business.* The value of specialized equipment must be included, however, if the employee to whom the automobile is available uses the specialized equipment in a trade of business of the employee other than the employee's trade or business of being an employee of the employer.

(C) *Equipment susceptible to personal use.* The exclusion rule provided in this paragraph (d)(5)(iv) does not apply to specialized equipment susceptible to personal use.

(v) *Fleet-average valuation rule*—(A) *In general.* An employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the fleet. The fleet-average value is the average of the fair market values of each automobile in the fleet. The fair market value of each automobile in the fleet shall be determined, pursuant to the rules of paragraphs (d)(5) (i) through (iv) of this section, as of the later of January 1, 1985, or the first date on which the automobile is made available to any employee of the employer for personal use.

(B) *Period for use of rule.* The fleet-average valuation rule of this paragraph (d)(5)(v) may be used by an employer as of January 1 of any calendar year following the calendar year in which the employer acquires a fleet of 20 or more automobiles. The Annual Lease Value calculated for the automobiles in the fleet, based on the fleet-average value, shall remain in effect for the period that begins with the first January 1 the fleet-average valuation rule of this paragraph (d)(5)(v) is applied by the employer to the automobiles in the fleet and ends on December 31 of the subsequent calendar year. The Annual Lease Value for each subsequent two year period is calculated by determining the fleet-average value of the automobiles in the fleet as of the first January 1 of such period. An employer may cease using the fleet-average valuation rule as of any January 1. The fleet-average valuation rule does not apply as of January 1 of the year in which the number of automobiles in the employer's fleet declines to fewer than 20. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (I.R.B. No. 31, August 5, 1985), the employer may apply the rules of this paragraph (d)(5)(v)(B) on the basis of the special accounting period rather than the calendar year. (This is accomplished by substituting (1) the beginning of the special accounting period that begins immediately prior to the January 1 described in this paragraph (d)(5)(v)(B) for January 1 wherever it appears in this paragraph (d)(5)(v)(B) and (2) the end of such accounting period for December 31.) The revaluation rules of paragraph (d)(2) (iv) and (v) of this section do not apply to automobiles valued under this paragraph (d)(5)(v).

(C) *Limitations on use of fleet-average rule.* The rule provided in this paragraph (d)(5)(v) may not be used for any automobile whose fair market value (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of either the first date on which the automobile is made available to any employee of the employer for personal use or, if later, January 1, 1985) exceeds $16,500. In addition, the rule provided in this paragraph (d)(5)(v) may only be used for automobiles that the employer reasonably expects will regularly be used in the employer's trade or business. Infrequent use of the vehicle, such as for trips to the airport or between the employer's multiple business premises, does not constitute regular use of the vehicle in the employer's trade or business.

(D) *Additional automobiles added to the fleet*. If the rule provided in this paragraph (d)(5)(v) is used by an employer, it must be used for every automobile included in or added to the fleet that meets the requirements of paragraph (d)(5)(v)(C) of this section. The fleet-average value in effect at the time an automobile is added to the fleet is treated as the fair market value of the automobile for purposes of determining the Annual Lease Value of the automobile until the fleet-average value changes pursuant to paragraph (d)(5)(v)(B) of this section.

(E) *Use of the fleet-average rule by employees*. An employee can only use the fleet-average value if it is used by the employer. If an employer uses the fleet-average value, and the employee uses the special valuation rule of paragraph (d) of this section, the employee must use the fleet-average value.

(6) *Consistency rules*—(i) *Use of the automobile lease valuation rule by an employer*. Except as provided in paragraph (d)(5) (v)(B) of this section, an employer may adopt the automobile lease valuation rule of this paragraph (d) for an automobile only if the rule is adopted with respect to the later of the period that begins on January 1, 1987, or the first period in which the automobile is made available to an employee of the employer for personal use or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to an employee of the employer for personal use, the first period in which the commuting valuation rule is not used.

(ii) *An employer must use the automobile lease valuation rule for all subsequent periods*. Once the automobile lease valuation rule has been adopted for an automobile by an employer, the rule must be used by the employer for all subsequent periods in which the employer makes the automobile available to any employee, except that the employer may, for any period during which use of the automobile qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the automobile.

(iii) *Use of the automobile lease valuation rule by an employee*. Except as provided in paragraph (c)(2)(ii)(C) of this section, an employee may adopt the automobile lease valuation rule for an automobile only if the rule is adopted (A) by the employer and (B) with respect to the first period in which the automobile for which the employer (consistent with paragraph (d)(6)(i) of this section) adopted the rule is made available to that employee for personal use, or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to that employee for personal use, the first period in which the commuting valuation rule is not used.

(iv) *An employee must use the automobile lease valuation rule for all subsequent periods*. Once the automobile lease valuation rule has been adopted for an automobile by an employee, the rule must be used by the employee for all subsequent periods in which the automobile for which the rule is used is available to the employee, except that the employee may, for any period during which use of the automobile qualifies for use of the commuting valuation rule of paragraph (f) of this section and for which the employer uses the rule, use the commuting valuation rule with respect to the automobile.

(v) *Replacement automobiles*. Notwithstanding anything in this paragraph (D)(6) to the contrary, if the automobile lease valuation rule is used by an employer, or by an employer and an employee, with respect to a particular automobile, and a replacement automobile is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement automobile.

(e) *Vehicle cents-per-mile valuation rule*—(1) *In general*—(i) *General rule*. Under the vehicle cents-per-mile valuation rule of this paragraph (e), if an employer provides an employee with the use of a vehicle that (A) the employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year (or such shorter period as the vehicle may be owned or leased by the employer) or (B) satisfies the requirements of paragraph (e)(1)(ii) of this section, the value of the benefit provided in the calendar year is the standard mileage rate provided in the applicable Revenue Ruling or Revenue Procedure (''cents-per-mile rate'') multiplied by the total number of miles the vehicle is driven by the employee for personal purposes. For 1985, the standard mileage rate is 21 cents per mile for the first 15,000 miles and 11 cents per mile for all miles over 15,000. See Rev. Proc. 85–49. The standard mileage rate must be applied to personal miles independent of business miles. Thus, for example, if an employee drives 20,000 personal miles and 35,000 business miles in 1985, the value of the personal use of the vehicle is \$3,700 (15,000×\$.21+5,000×\$.11). For purposes of this section, the use of a vehicle for personal purposes is any use of the vehicle other than use in the employee's trade or business of being an employee of the employer. Infrequent use of the vehicle, such as for trips to the airport or between the employer's multiple business premises, does not constitute regular use of the vehicle in the employer's trade or business.

(ii) *Mileage rule.* A vehicle satisfies the requirements of this paragraph (e)(1)(ii) in a calendar year if (A) it is actually driven at least 10,000 miles in the year, and (B) use of the vehicle during the year is primarily by employees. For example, if a vehicle is used by only one employee during the year and that employee drives a vehicle at least 10,000 miles in a calendar year, such vehicle satisfies the requirements of this paragraph (e)(1)(ii) even if all miles driven by the employee are personal. The requirements of this paragraph (e)(1)(ii), however, will not be satisfied if during the year the vehicle is transferred among employees in such a way which enables an employee whose use was at a rate significantly less that 10,000 miles per year to meet the 10,000 mile threshold. Assume that an employee uses a vehicle for the first six months of the year and drives 2,000 miles, and that vehicle is then used by other employees who drive the vehicle 8,000 miles in the last six months of the year. Because the rate at which miles were driven in the first six months of the year would result in only 4,000 miles being driven in the year, and because the first employee did not use the vehicle during the last six months of the year, the requirements of this paragraph (e)(1)(ii) are not satisfied. The requirement of paragraph (e)(1)(ii)(B) of this section is deemed satisfied if employees use the vehicle on a consistent basis for commuting. If the employer does not own or lease the vehicle during a portion of the year, the 10,000 mile threshold is to be reduced proportionately to reflect the periods when the employer owned or leased the vehicle. For purposes of this paragraph (e)(1)(ii), use of the vehicle by an individual (other than the employee) whose use would be taxed to the employee is not considered use by the employee.

(iii) *Limitation on use of the vehicle cents-per-mile valuation rule.* The value of the use of an automobile (as defined in paragraph (d)(1)(ii) of this section) may not be determined under the vehicle cents-per-mile valuation rule of this paragraph (e) if the fair market value of the automobile (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of the later of January 1, 1985, or the first date on which the automobile is made available to any employee of the employer for personal use) exceeds \$12,800. No inference may be drawn from the promulgation or terms of this section concerning the application of law in effect prior to January 1, 1985.

(2) *Definition of vehicle.* For purposes of this paragraph (e), the term ''vehicle'' means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term ''vehicle'' includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(3) *Services included in, or excluded from, the cents-per-mile rate*—(i) *Maintenance and insurance included.* The cents-per-mile rate includes the fair market value of maintenance of, and

insurance for, the vehicle. An employer may not reduce the cents-per-mile rate by the fair market value of any service included in the cents-per-mile rate but not provided by the employer. An employer or employee may take into account the services provided with respect to the automobile by valuing the availability of the automobile under the general valuation rules of paragraph (b) of this section.

(ii) *Fuel provided by the employer*—(A) *Miles driven in the United States, Canada, and Mexico*. With respect to miles driven in the United States, Canada, and Mexico, the cents-per-mile rate includes the fair market value of fuel provided by the employer. If fuel is not provided by the employer, the cents-per-mile rate may be reduced by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. For purposes of this section, the United States includes the United States and its territories.

(B) *Miles driven outside the United States, Canada, and Mexico*. With respect to miles driven outside the United States, Canada, and Mexico, the fair market value of fuel provided by the employer is not reflected in the cents-per-mile rate. Accordingly, the cents-per-mile rate may be reduced but by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. If the employer provides the fuel in kind, it must be valued based on all the facts and circumstances. If the employer reimburses the employee for the cost of fuel or allows the employee to charge the employer for the cost of fuel, the fair market value of the fuel is generally the amount of the actual reimbursement or the amount charged, provided the purchase of fuel is at arm's length.

(4) *Valuation of personal use only*. The vehicle cents-per-mile valuation rule of this paragraph (e) may only be used to value the miles driven for personal purposes. Thus, the employer must include an amount in an employee's income with respect to the use of a vehicle that is equal to the product of the number of personal miles driven by the employee and the appropriate cents-per-mile rate. The employer may not include in income a greater or lesser amount; for example, the employer may not include in income 100 percent (all business and personal miles) of the value of the use of the vehicle. The term ''personal miles'' means all miles driven by the employee except miles driven by the employee is the employee's trade or business of being an employee of the employer.

(5) *Consistency rules*—(i) *Use of the vehicle cents-per-mile valuation rule by an employer*. An employer must adopt the vehicle cents-per-mile valuation rule of this paragraph (e) for a vehicle by the later of the period that begins on January 1, 1987, or the first period in which the vehicle is used by an employee of the employer for personal use or, if the commuting valuation rule of paragraph (f) of this section is used when the vehicle is first used by an employee of the employer for personal use, the first period in which the commuting valuation rule is not used.

(ii) *An employer must use the vehicle cents-per-mile valuation rule for all subsequent periods*. Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent periods in which the vehicle qualifies for use of the rule, except that (A) the employer may, for any period during which use of the vehicle qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the vehicle, and (B) if the employer elects to use the automobile lease valuation rule of paragraph (d) of this section for a period in which the vehicle does not qualify for use of the vehicle cents-per-mile valuation rule, then the employer must comply with the requirements of paragraph (d)(6) of this section. If the vehicle fails to qualify for use of the vehicle cents-per-mile valuation rule during a subsequent period, the employer may adopt for such subsequent period and thereafter any other special valuation rule for which the vehicle then qualifies. For purposes of paragraph (d)(6) of this section, the first day on which an automobile with respect to which the vehicle cents-per-mile rule had been used fails to qualify for use of the vehicle cents-per-mile valuation rule may be deemed to be the first day on which the automobile is available to an employee of the employer for personal use.

(iii) *Use of the vehicle cents-per-mile valuation rule by an employee.* An employee may adopt the vehicle cents-per-mile valuation rule for a vehicle only if the rule is adopted (A) by the employer and (B) with respect to the first period in which the vehicle for which the employer (consistent with paragraph (e)(5)(i) of this section) adopted the rule is available to that employee for personal use or, if the commuting valuation rule of paragraph (f) of this section is used by both the employer and the employee when the vehicle is first used by an employee for personal use, the first period in which the commuting valuation rule is not used.

(iv) *An employee must use the vehicle cents-per-mile valuation rule for all subsequent periods.* Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employee, the rule must be used by the employee for all subsequent periods of personal use of the vehicle by the employee for which the rule is used by the employer, except that the employee may, for any period during which use of the vehicle qualifies for use of the commuting valuation rule of paragraph (f) of this section and for which such rule is used by the employer, use the commuting valuation rule with respect to the vehicle.

(v) *Replacement vehicles.* Notwithstanding anything in this paragraph (e)(5) to the contrary, if the vehicle cents-per-mile valuation rule is used by an employer, or by an employer and an employee, with respect to a particular vehicle, and a replacement vehicle is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement vehicle if the replacement vehicle qualifies for use of the rule.

(f) *Commuting valuation rule*—(1) *In general.* Under the commuting valuation rule of this paragraph (f), the value of the commuting use of an employer-provided vehicle may be determined pursuant to paragraph (f)(3) of this section if the following criteria are met by the employer and employees with respect to the vehicle:

(i) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business;

(ii) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle;

(iii) The employer has established a written policy under which the employee may not use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home);

(iv) Except for de minimis personal use, the employee does not use the vehicle for any personal purpose other than commuting; and

(v) The employee required to use the vehicle for commuting is not a control employee of the employer (as defined in paragraphs (f) (5) and (6) of this section).

If the vehicle is a chauffeur-driven vehicle, the commuting valuation rule of this paragraph (f) may not be used to value the commuting use of any passenger who commutes in the vehicle. The rule may be used, however, to value the commuting use of the chauffeur. Personal use of a vehicle is all use of the vehicle by the employee that is not used in the employee's trade or business of being an employee of the employer.

(2) *Special rules.* Notwithstanding anything in paragraph (f)(1) of this section to the contrary, the following special rules apply—

(i) *Written policy not required in 1985.* The policy described in paragraph (f)(1)(iii) of this section prohibiting personal use need not be written with respect to the commuting use which occurs prior to January 1, 1986;

(ii) *Commuting use during 1985.* For commuting use that occurs after December 31, 1984, but before January 1, 1986, the restrictions of paragraph (f)(1)(v) of this section shall be applied by substituting ''an employee who is an officer or a five-percent owner of the employer'' in lieu of ''a control employee''. For purposes of determining who is a five-percent owner, any individual who owns (or is considered as owning) five or more percent of the fair market value of an entity (the ''owned entity'') is considered a five-percent owner of all entities that would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m). An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c), or (m). The definitions provided in paragraphs (f)(5)(i) and (f)(6) of this section may be used to define an officer; and

(iii) *Control employee exception.* If the vehicle in which the employee is required to commute is not an automobile as defined in paragraph (d)(1)(ii) of this section, the restrictions of paragraph (f)(1)(v) of this section do not apply.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (f) are satisfied, the value of the commuting use of an employer-provided vehicle is $1.50 per one-way commute (e.g., from home to work or from work to home).

(ii) *Value per employee.* If there is more than one employee who commutes in the vehicle, such as in the case of an employer-sponsored car pool, the amount includible in the income of each employee is $1.50 per one-way commute. Thus, the amount includible for each round-trip commute is $3.00 per employee.

(4) *Definition of vehicle.* For purposes of this paragraph (f), the term ''vehicle'' means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term ''vehicle'' includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(5) *Control employee defined—Non-government employer.* For purposes of this paragraph (f), a control employee of a non-government employer is any employee—

(i) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer,

(ii) Who is a director of the employer, or

(iii) Who owns a one-percent or greater equity, capital, or profits interest in the employer.

For purposes of determining who is a one-percent owner under paragraph (f)(5)(iii) of this section, any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) one percent or more of the fair market value of an entity (the ''owned entity'') is considered a one-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m). An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c) or (m).

(6) *Control employee defined—Government employer.* For purposes of this paragraph (f), a control employee of a government employer if any—

(i) Elected official,

(ii) Federal employee who is appointed by the President and confirmed by the Senate. In the case of commissioned officers of the United States Armed Forces, an officer is any individual with the rank of brigadier general or above or the rank of rear admiral (lower half) or above; or

(iii) State or local executive officer comparable to the individuals described in paragraph (f)(6) (i) and (ii) of this section.

For purposes of this paragraph (f), the term ''government'' includes any Federal, state, or local governmental unit, and any agency or instrumentality thereof.

(g) *Non-commercial flight valuation rule*—(1) *In general.* Under the non-commercial flight valuation rule of this paragraph (g), if an employee is provided with a flight on an employer-provided aircraft, the value of the flight is calculated using the aircraft valuation formula provided in paragraph (g)(5) of this section. Except as otherwise provided, for purposes of this paragraph (g), a flight provided to a person whose flight would be taxable to an employee as the recipient is referred to as provided to the employee, and a flight taken by such person is considered a flight taken by the employee.

(2) *Eligible flights and eligible aircraft.* The valuation rule of this paragraph (g) may be used to value flights on all employer-provided aircraft, including helicopters. The valuation rule of this paragraph (g) may be used to value international as well as domestic flights. The valuation rule of this paragraph (g) may not be used to value a flight on any commercial aircraft on which air transportation is sold to the public on a per-seat basis. For a special valuation rule relating to certain flights on commercial aircraft, see paragraph (h) of this section.

(3) *Definition of a flight*—(i) *General rule.* Except as otherwise provided in paragraph (g)(3)(iii) of this section (relating to intermediate stops), for purposes of this paragraph (g), an individual's flight is the distance (in statute miles) between the place at which the individual boards the aircraft and the place at which the individual deplanes.

(ii) *Valuation of each flight.* Under the valuation rule of this paragraph (g), value is determined separately for each flight. Thus, a round-trip is comprised of at least two flights. For example, an employee who takes a personal trip on an employer-provided aircraft from New York, New York to Denver, Colorado, Denver to Los Angeles, California, and Los Angeles to New York has taken three flights and must apply the aircraft valuation formula separately to each flight. The value of a flight must be determined on a passenger-by-passenger basis. For example, if an individual accompanies an employee and the flight taken by the individual would be taxed to the employee, the employee would be taxed on the special rule value of the flight by the employee and by the individual.

(iii) *Intermediate stop.* If the primary purpose of a landing is necessitated by weather conditions, by an emergency, for purposes of refueling or obtaining other services relating to the aircraft, or for purposes of the employer's business unrelated to the employee whose flight is being valued (''an intermediate stop''), the distance between the place at which the trip originates and the place at which the intermediate stop occurs is not considered a flight. For example, assume that an employee's trip originates in St. Louis, Missouri, on route to Seattle, Washington, but, because of weather conditions, the aircraft lands in Denver, Colorado, and the employee stays in Denver overnight. Assume further that the next day the aircraft flies to Seattle where the employee deplanes. The employee's flight is the distance between the airport in St. Louis and the airport in Seattle. Assume that a trip originates in New York, New York, with five passengers and makes an intermediate stop in Chicago, Illinois, before going on to Los Angeles, California. If one of the five passengers deplanes in Chicago, the distance of that passenger's flight would be the distance between the airport in New York and the airport in Chicago. The intermediate stop is disregarded when measuring the flights taken by each of the other passengers. Their flights would be the distance between the airport in New York and the airport in Los Angeles.

(4) *Personal and non-personal flights*—(i) *In general.* The valuation rule of this paragraph (g) applies to personal flights on employer-provided aircraft. A personal flight is one the value of which is not excludable under another section of subtitle A, such as under section 132(d) (relating to a working condition fringe). However, solely for purposes of paragraphs (g)(4)(ii) and (g)(4)(iii) of this section, references to personal flights do not include flights a portion of which would not be excludable by reason of section 274.(c).

(ii) *Trip primarily for employer's business.* If an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the employee's trip is primarily for the employer's business (see §1.162–2(b)(2)), the employee must include in income the excess of the value of all the flights that comprise the trip over the value of the flights that would have been taken had there been no personal flights but only business flights. For example, assume that an employee flies on an employer-provided aircraft from Chicago, Illinois to Miami, Florida, for the employer's business and that from Miami the employee flies on the employer-provided aircraft to Orlando, Florida, for personal purposes and then flies back to Chicago. Assume further that the primary purpose of the trip is for the employer's business. The amount includible in income is the excess of the value of the three flights (Chicago to Miami, Miami to Orlando, and Orlando to Chicago), over the value of the flights that would have been taken had there been no personal flights but only business flights (Chicago to Miami and Miami to Chicago).

(iii) *Primarily personal trip.* In an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the aircraft's trip is primarily personal (see §1.162–2(b)(2)), the amount includible in the employee's income is the value of the personal flights that would have been taken had there been no business flights but only personal flights. For example, assume that an employee flies on an employer-provided aircraft from San Francisco, California, to Los Angeles, California, for the employer's business and that from Los Angeles the employee flies on an employer-provided aircraft to Palm Springs, California, primarily for personal reasons and then flies back to San Francisco. Assume further that the primary purpose of the trip is personal. The amount includible in the employee's income is the value of personal flights that would have been taken had there been no business flights but only personal flights (San Francisco to Palm Springs and Palm Springs to San Francisco).

(iv) *Application of section 274(c).* The value of employer-provided travel outside the United States away from home may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, to the extent not deductible by reason of section 274(c). The valuation rule of this paragraph (g) applies to that portion of the value of any flight not excludable by reason of section 274(c). Such value must be included in income in addition to the amounts determined under paragraphs (g)(4)(ii) and (g)(4)(iii) of this section.

(v) *Flight by individuals who are not personal guests.* If an individual who is not an employee of the employer providing the aircraft is on a flight, and the individual is not the personal guest of any employee, the flight by the individual is not taxable to any employee of the employer providing the aircraft. The rule in the preceding sentence applies where the individual is provided the flight by the employer for non-compensatory business reasons of the employer. For example, assume that G, and employee of company Y, accompanies A, an employee of company X, on company X's aircraft for the purpose of inspecting land under consideration for purchase by company X from company Y. The flight by G is not taxable to A.

(5) *Aircraft valuation formula.* Under the valuation rule of this paragraph (g), the value of a flight is determined by multiplying the base aircraft valuation formula for the period during which the flight was taken by the appropriate aircraft multiple (as provided in paragraph (g)(7) of this section) and then adding the applicable terminal charge. The base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) in effect on June 30, 1985, is as follows: ($.1402 per mile for the first 500 miles, $.1069 per mile for miles between 501 and 1500, and $.1028 per mile for miles over 1500). The terminal charge in effect on June 30, 1985, is $25.62. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are revised semi-annually.

(6) *SIFL formula in effect for a particular flight.* For purposes of this paragraph (g), in determining the value of a particular flight during the first six months of a calendar year, the SIFL formula (and terminal charge) in effect on December 31 of the preceding year applies, and in determining the value of a particular flight during the last six months of a calendar year, the SIFL formula (and terminal charge) in effect on June 30 of that year applies. The following is the SIFL formula in effect on December 31, 1984: ($.1480 per mile for the first 500 miles, $.1128 per mile for miles between 501 and 1500, and $.1085 per mile for miles over 1500). The terminal charge in effect on December 31, 1984, is $27.05.

(7) *Aircraft multiples*—(i) *In general.* The aircraft multiples are based on the maximum certified takeoff weight of

the aircraft. For purposes of applying the aircraft valuation formula described in paragraph (g)(5) of this section, the aircraft multiples are as follows:

[In percent]

| Maximum certified takeoff weight of the aircraft | Aircraft multiple for a— | |
|---|---|---|
| | Control employee | Non-control employee |
| 6,000 lbs. or less | 62.5 | 15.6 |
| 6,001 to 10,000 lbs | 125.0 | 23.4 |
| 10,001 to 25,000 lbs | 300.0 | 31.3 |
| 25,001 lbs. or more | 400.0 | 31.3 |

(ii) *Flights treated as provided a to control employee.* Except as provided in paragraph (g)(10) of this section, any flight provided to an individual whose flight would be taxable to a control employee (as defined in paragraph (g)(8) and (9) of this section) as the recipient shall be valued as if such flight has been provided to that control employee. For example, assume that the chief executive officer of an employer, his spouse, and his two children fly on an employer-provided aircraft for personal purposes. Assume further that the maximum certified takeoff weight of the aircraft is 12,000 lbs. The amount includible in the employee's income is 4 × ((300 percent × base aircraft valuation formula) plus the applicable terminal charge).

(8) *Control employee defined—Non-government employer.* For purposes of this paragraph (g), a control employee of a non-government employer is any employee—

(i) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer, limited to the lesser of (A) one-percent of all employees (increased to the next highest integer, if not an integer) or (B) ten employees;

(ii) Whose compensation equals or exceeds the compensation of the top one percent most highly-paid employees of the employer (increased to the next highest integer, if not an integer) limited to a maximum of 25 employees;

(iii) Who owns a ten-percent or greater equity, capital or profits interest in the employer; or

(iv) Who is a director of the employer.

For purposes of this paragraph (g), any employee who is a family member (within the meaning of section 267(c)(4)) of a control employee is also a control employee. Pursuant to this paragraph (g)(8), an employee may be a control employee under more than one of the requirements listed in paragraphs (g)(8) (i) through (iv) of this section. For example, an employee may be both an officer under paragraph (g)(8)(i) of this section and a highly-paid employee under paragraph (g)(8)(ii) of this section. In this case, for purposes of the officer limitation rule of paragraph (g)(8)(i) of this section and the highly-paid employee limitation rule of paragraph (g)(8)(ii) of this section, the employee would be counted as reducing both such limitation rules. In no event shall an employee whose compensation is less than $50,000 be a control employee under paragraph (g)(8)(ii) of this section. For purposes of determining who is a ten-percent owner under paragraph (g)(8)(iii) of this section, any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) ten percent or more of the fair market value of an entity (the "owned entity") is considered a ten-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m). For purposes of determining who is an officer under paragraph (g)(8)(i) of this section, notwithstanding anything in this section to the contrary, if the employer would be aggregated with other employers under the rules of section 414 (b), (c), or (m), the officer definition and the limitations are applied to each separate employer rather than to the aggregated employer. If applicable, the officer limitation rule of paragraph (g)(8)(i) of this section is applied to employees in descending order of their compensation. Thus, if an employer has 11 board-appointed officers, the employee with the least compensation of those officers would not be an officer under paragraph (g)(8)(i) of this section. For purposes of this paragraph (g), the term "compensation" means the amount reported on a Form W-2 as income for the prior calendar year. Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c), or (m).

(9) *Control employee defined—Government.* For purposes of this paragraph (g), a control employee of a government employer is any—

(i) Elected officials;

(ii) Federal employee who is appointed by the President and confirmed by the Senate. In the case of commissioned officers of the United States Armed Forces, an officer is any individual with the rank or brigadier general or above or the rank of rear admiral (lower half) or above; or

(iii) State or local executive officer comparable to the individuals in paragraph (g)(9)(i) and (ii) of this section.

For purposes of this paragraph (g), the term ''government'' includes any Federal, state, or local government unit, and any agency or instrumentality thereof.

(10) *Seating capacity rule*—(i) *In general.* Where 50 percent of more of the regular passenger seating capacity of an aircraft (as used by the employer) is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)), the value of a flight on that aircraft by any employee who is not flying primarily for the employer's business (or who is flying primarily for the employer's business but the value of whose flight is not excludable under section 132(d) by reason of section 274(c)) is deemed to be zero. See §1.132–5T which limits the exclusion under section 132(d) to situations where the employee receives the flight in connection with the performance of services for the employer providing the aircraft. For purposes of this paragraph (g)(10), the term ''employee'' includes only employees and partners of the employer providing the aircraft and does not include independent contractors and directors of the employer.

For purposes of this paragraph (g)(10), the second sentence of paragraph (g)(1) of this section will not apply. Instead, a flight taken by an individual who is either treated as an employee pursuant to section 132(f)(1) or whose flight is treated as a flight taken by an employee pursuant to section 132(f)(2) is considered a flight taken by an employee. If (A) a flight is considered taken by an individual other than an employee (as defined in this paragraph (g)(10)), (B) the value of that individual's flight is not excludable under section 132(d), and (C) the seating capacity rule of this paragraph (g)(10) otherwise applies, then the value of the flight provided to such an individual is the value of a flight provided to a non-control employee (even if the individual who would be taxed on the value of such individual's flight is a control employee).

(ii) *Application of 50-percent test to multiple flights.* The seating capacity rule of this paragraph (g)(10) must be met both at the time the individual whose flight is being valued boards the aircraft and at the time the individual deplanes. For example, assume that employee A boards an employer-provided aircraft for personal purposes in New York, New York, and that at that time 80 percent of the regular passenger seating capacity of the aircraft is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)) (''the business passengers''). If the aircraft flies directly to Hartford, Connecticut where all of the passengers, including A, deplane, the requirements of the seating capacity rule of this paragraph (g)(10) have been satisfied. If instead, some of the passengers, including A, remain on the aircraft in Hartford and the aircraft continues on to Boston, Massachusetts, where they all deplane, the requirements of the seating capacity rule of this paragraph (g)(10) will not be satisfied unless at least 50 percent of the seats comprising the aircraft's regular passenger seating capacity were occupied by the business passengers at the time A deplanes in Boston.

(iii) *Regular passenger seating capacity.* The regular passenger seating capacity of an aircraft is the maximum number of seats that have at any time been on the aircraft (while owned or leased by the employer). Except to the extent excluded pursuant to paragraph (g)(10)(v) of this section, regular seating capacity includes all seats which may be occupied by members of the flight crew. It is irrelevant that on a particular flight, less than the maximum number of seats are available for use, because, for example, some of the seats are removed. When determining the maximum number of seats, those seats that cannot at any time be legally used during takeoff and are not any time used during takeoff are not counted.

(iv) *Examples.* The rules of paragraph (g)(10)(iii) of this section are illustrated by the following examples:

*Example 1.* Employer A and employer B order the same aircraft, except that A orders it with 10 seats and B orders it with eight seats. A always uses its aircraft as a 10-seat aircraft; B always uses its aircraft as an eight-seat aircraft. The regular passenger seating capacity of A's aircraft is 10 and of B's aircraft is eight.

*Example 2.* Assume the same facts as in example (1), except that whenever A's chief executive officer and spouse use the aircraft eight seats are removed. Even if substantially all of the use of the aircraft is by the chief executive officer and spouse the regular passenger seating capacity of the aircraft is 10.

*Example 3.* Assume the same facts as in example (1), except that whenever more than eight people want to fly in B's aircraft, two extra seats are added. Even if substantially all of the use of the aircraft occurs with eight seats, the regular passenger seating capacity of the aircraft is 10.

(v) *Seats occupied by flight crew.* When determining the regular passenger seating capacity of an aircraft, any seat occupied by a member of the flight crew (whether or not such individual is an employee of the employer providing the aircraft) shall not be counted, unless the purpose of the flight by such individual is not primarily to serve as a member of the flight crew. If the seat occupied by a member of the flight crew is not counted as a passenger seat pursuant to the previous sentence, such member of the flight crew is disregarded in applying the 50 percent test described in the first sentence of paragraph (g)(10)(i) of this section. For example, assume that, prior to the application of this paragraph (g)(10)(v), the regular passenger seating capacity of an aircraft is two seats.

Assume further that an employee pilots the aircraft and that the employee's flight is not primarily for the employer's business. If the employee's spouse occupies the other seat for personal purposes, the seating capacity rule is not met and the value of both flights must be included in the employee's income. If, however, the employee's flight were primarily for the employer's business (unrelated to serving as a member of the flight crew), then the seating capacity rule is met and the value of the flight for the employee's spouse is deemed to be zero. If the employee's flight were primarily to serve as a member of the flight crew, then the seating capacity rule is not met and the value of a flight by any passenger for primarily personal reasons is not deemed to be zero.

(11) *Erroneous use of the non-commercial flight valuation rule*—(i) *In general.* If the non-commercial flight valuation rule of this paragraph (g) is used by an employer or a control employee, as the case may be, on a return as originally filed, on the grounds that either the control employee is not in fact a control employee, or that the aircraft is within a specific weight classification, and either position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) (including paragraph (g)(13) of this section) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position. With respect to the weight classifications, the previous sentence does not apply if the position taken is that the weight of the aircraft is greater than it is subsequently determined to be. If, with respect to a flight by a control employee, the seating capacity rule of paragraph (g)(10) of this section is used by an employer or the control employee, as the case may be, on a return as originally filed, and it is subsequently determined that the requirements of paragraph (g)(10) of this section were not met, the valuation rule of this paragraph (g) (including paragraph (g)(13) of this section) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position.

(ii) *Value of flight excluded as a working condition fringe.* If either an employer or an employee, on a return as originally filed, excludes from the employee's income or wages the value of a flight on the grounds that the flight was excludable as a working condition fringe under section 132, and that position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) (including paragraph (g)(13) of this section) is not available to value the flight taken by that employee by the person or persons taking the erroneous position.

(12) *Consistency rules*—(i) *Use by the employer*. Except as otherwise provided in paragraphs (g)(11) and (g)(13)(iv) of this section, if the non-commercial flight valuation rule of this paragraph (g) is used by an employer to value flights provided in a calendar year, the rule must be used to value all flights provided in the calendar year.

(ii) *Use by the employee*. Except as otherwise provided in paragraphs (g)(11) and (g)(13)(iv) of this section, if the non-commercial flight valuation rule of this paragraph (g) is used by an employee to value a flight taken in a calendar year, the rule must be used to value all flights taken in the calendar year.

(13) *Transitional valuation rule*—(i) *In general*. If the value of a flight determined under this paragraph (g)(13) is lower than the value of the flight otherwise determined under paragraph (g) of this section, the value of the flight is the lower amount. The transitional valuation rule of this paragraph (g)(13) is available only for flights provided after December 31, 1984, and before January 1, 1986.

(ii) *Transitional valuation rule aircraft multiples*. The appropriate aircraft multiples under the transitional valuation rule are as follows:

(A) 125 percent of the base aircraft valuation formula, plus the applicable terminal charge, for any flight by any employee who is not a key employee (as defined in paragraph (g)(13)(iii) of this section.)

(B) 125 percent of the base aircraft valuation formula, plus the applicable terminal charge, for a flight by a key employee if there is a primary business purpose of the trip by the aircraft. For purposes of this paragraph (g)(13)(ii)(B), entertaining an employee or other individual is not a business purpose.

(C) 600 percent of the base aircraft valuation formula, plus the applicable terminal charge, for a flight by a key employee if there is not primary business for the trip by the aircraft.

Where there is no business purpose for the trip by the aircraft, the alternative valuation rule may not be used to value a flight by a key employee. For purposes of this section, compensating an employee is not a business purpose.

(iii) *Key employee defined*. A ''key employee'' is any employee who is a five-percent owner or an officer of the employer, or who, with respect to a particular trip by the aircraft, controls the use of the aircraft. For purposes of determining who is a five-percent owner, any individual who owns (or is considered as owning) five or more percent of the fair market value of an entity (the ''owned entity'') is considered a five-percent owner of all entities that would be aggregated with the owned entity under the rules of section 414(b), (c), or (m).

(iv) *Erroneous use of transitional valuation rule*. If the transitional valuation rule is used by an employer or a key employee, as the case may be, on a return as originally filed, on the grounds that—

(A) The key employee is not in fact a key employee,

(B) An aircraft trip had a primary business purpose, or

(C) An aircraft trip had some business purpose,

and such position is subsequently determined to be erroneous, neither the transitional valuation rule nor the non-commercial flight valuation rule of this paragraph (g) is available to value such flight taken by that key employee by the person or persons taking the erroneous position.

(h) *Commercial flight valuation rule*—(1) *In general*. Under the commercial flight valuation rule of this paragraph (h), the value of a space-available flight (as defined in paragraph (h)(2) of this section) on a commercial aircraft is 25 percent of the actual carrier's highest unrestricted coach fare in effect for the particular flight taken.

(2) *Space-available flight*. The commercial flight valuation rule of this paragraph (h) is available to value a space-available flight. The term

''space-available flight'' means a flight on a commercial aircraft (i) for which the airline (the acutal carrier) incurs no substantial additional cost (including forgone revenue) determined without regard to any amount paid for the flight and (ii) which is subject to the same types of restrictions customarily associated with flying on an employee ''standby'' or ''space-available'' basis. A flight may be a space-available flight even if the airline that is the actual carrier is not the employer of the employee.

(3) *Commercial aircraft.* If the actual carrier does not offer, in the ordinary course of its business, air transportation to customers on a per-seat basis, the commercial flight valuation rule of this paragraph (h) is not available. Thus, if, in the ordinary course of its line of business, the employer only offers air transportation to customers on a charter basis, the commerical flight valuation rule of this paragraph (h) may not be used to value a space-available flight on the employer's aircraft. Similarly, if, in the ordinary course of its line of business, an employer only offers air transportation to customers for the transport of cargo, the commercial flight valuation rule of this paragraph (h) may not be used to value a space-available flight on the employer's aircraft.

(4) *Timing of inclusion.* The date that the flight is taken is the relevant date for purposes of applying section 61(a)(1) and this section to a space-available flight on a commercial aircraft. The date of purchase or issuance of a pass or ticket is not relevant. Thus, this section applies to a flight taken on or after January 1, 1985, regardless of the date on which the pass or ticket for the flight was purchased or issued.

(5) *Consistency rules*—(i) *Use by employer.* If the commercial flight valuation rule of this paragraph (h) is used by an employer to value flights provided in a calendar year, the rule must be used to value all flights provided in the calendar year.

(ii) *Use by employee.* If the commercial flight valuation rule of this paragraph (h) is used by an employee to value a flight taken in a calendar year, the rule must be used to value all flights taken by such employee in the calendar year.

(i) [Reserved]

(j) *Valuation of meals provided at an employer-operated eating facility for employees*—(1) *In general.* The valuation rule of this paragraph (j) may be used to value a meal provided at an employer-operated eating facility for employees (as defined in §1.132–7T). For rules relating to an exclusion for the value of meals provided at an employer-operated eating facility for employees, see §1.132–7T.

(2) *Valuation formula*—(i) *In general.* The value of all meals provided at an employer-operated eating facility for employees during a calendar year is 150 percent of the direct operating costs of the eating facility (''total meal value''). For purposes of this paragraph (j), the definition of direct operating costs provided in §1.132–7T applies. The taxable value of meals provided at an eating facility may be determined in two ways. The ''individual meal subsidy'' may be treated as the taxable value of a meal provided at the eating facility (see paragraph (j)(2)(ii) of this section). Alternatively, the employer may allocate the ''total meal subsidy'' among employees (see paragraph (j)(2)(iii) of this section).

(ii) *''Individual meal subsidy'' defined.* The ''individual meal subsidy'' is determined by multiplying the price charged for a particular meal by a fraction, the numerator of which is the total meal value and the denominator of which is the gross receipts of the eating facility, and then subtracting the amount paid for the meal. The taxable value of meals provided to a particular employee during a calendar year, therefore, is the sum of the individual meal subsidies provided to the employee during the calendar year.

(iii) *Allocation of ''total meal subsidy.''* Instead of using the individual meal value method, the employer may allocate the ''total meal subsidy'' (total meal value less the gross receipts of the facility) among employees in any manner reasonable under the circumstances.

[T.D. 8063, 50 FR 52285, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28582, July 6, 1989; T.D. 8457, 57 FR 62195, Dec. 30, 1992]

**§ 1.61–3 Gross income derived from business.**

(a) *In general.* In a manufacturing, merchandising, or mining business, "gross income" means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. Gross income is determined without subtraction of depletion allowances based on a percentage of income to the extent that it exceeds cost depletion which may be required to be included in the amount of inventoriable costs as provided in §1.471–11 and without subtraction of selling expenses, losses or other items not ordinarily used in computing costs of goods sold or amounts which are of a type for which a deduction would be disallowed under section 162 (c), (f), or (g) in the case of a business expense. The cost of goods sold should be determined in accordance with the method of accounting consistently used by the taxpayer. Thus, for example, an amount cannot be taken into account in the computation of cost of goods sold any earlier than the taxable year in which economic performance occurs with respect to the amount (see §1.446–1(c)(1)(ii)).

(b) *State contracts.* The profit from a contract with a State or political subdivision thereof must be included in gross income. If warrants are issued by a city, town, or other political subdivision of a State, and are accepted by the contractor in payment for public work done, the fair market value of such warrants should be returned as income. If, upon conversion of the warrants into cash, the contractor does not receive and cannot recover the full value of the warrants so returned, he may deduct any loss sustained from his gross income for the year in which the warrants are so converted. If, however, he realizes more than the value of the warrants so returned, he must include the excess in his gross income for the year in which realized.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7207, 37 FR 20767, Oct. 5, 1972; T.D. 7285, 38 FR 26184, Sept. 19, 1973; T.D. 8408, 57 FR 12419, Apr. 10, 1992]

**§ 1.61–4 Gross income of farmers.**

(a) *Farmers using the cash method of accounting.* A farmer using the cash receipts and disbursements method of accounting shall include in his gross income for the taxable year—

(1) The amount of cash and the value of merchandise or other property received during the taxable year from the sale of livestock and produce which he raised,

(2) The profits from the sale of any livestock or other items which were purchased,

(3) All amounts received from breeding fees, fees from rent of teams, machinery, or land, and other incidental farm income,

(4) All subsidy and conservation payments received which must be considered as income, and

(5) Gross income from all other sources.

The profit from the sale of livestock or other items which were purchased is to be ascertained by deducting the cost from the sales price in the year in which the sale occurs, except that in the case of the sale of purchased animals held for draft, breeding, or dairy purposes, the profits shall be the amount of any excess of the sales price over the amount representing the difference between the cost and the depreciation allowed or allowable (determined in accordance with the rules applicable under section 1016(a) and the regulations thereunder). However, see section 162 and the regulations thereunder with respect to the computation of taxable income on other than the crop method where the cost of seeds or young plants purchased for further development and cultivation prior to sale is involved. Crop shares (whether or not considered rent under State law) shall be included in gross income as of the year in which the crop shares are reduced to money or the equivalent of money. See section 263A for rules regarding costs that are required to be capitalized.

(b) *Farmers using an accrual method of accounting.* A farmer using an accrual method of accounting must use inventories to determine his gross income. His gross income on an accrual method is determined by adding the total of the items described in subparagraphs

(1) through (5) of this paragraph and subtracting therefrom the total of the items described in subparagraphs (6) and (7) of this paragraph. These items are as follows:

(1) The sales price of all livestock and other products held for sale and sold during the year;

(2) The inventory value of livestock and products on hand and not sold at the end of the year;

(3) All miscellaneous items of income, such as breeding fees, fees from the rent of teams, machinery, or land, or other incidental farm income;

(4) Any subsidy or conservation payments which must be considered as income;

(5) Gross income from all other sources;

(6) The inventory value of the livestock and products on hand and not sold at the beginning of the year; and

(7) The cost of any livestock or products purchased during the year (except livestock held for draft, dairy, or breeding purposes, unless included in inventory).

All livestock raised or purchased for sale shall be added in the inventory at their proper valuation determined in accordance with the method authorized and adopted for the purpose. Livestock acquired for draft, breeding, or dairy purposes and not for sale may be included in the inventory (see subparagraphs (2), (6), and (7) of this paragraph) instead of being treated as capital assets subject to depreciation, provided such practice is followed consistently from year to year by the taxpayer. When any livestock included in an inventory are sold, their cost must not be taken as an additional deduction in computing taxable income, because such deduction is reflected in the inventory. See the regulations under section 471. See section 263A for rules regarding costs that are required to be capitalized. Crop shares (whether or not considered rent under State law) shall be included in gross income as of the year in which the crop shares are reduced to money or the equivalent of money.

(c) *Special rules for certain receipts.* In the case of the sale of machinery, farm equipment, or any other property (except stock in trade of the taxpayer, or property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business), any excess of the proceeds of the sale over the adjusted basis of such property shall be included in the taxpayer's gross income for the taxable year in which such sale is made. See, however, section 453 and the regulations thereunder for special rules relating to certain installment sales. If farm produce is exchanged for merchandise, groceries, or the like, the market value of the article received in exchange is to be included in gross income. Proceeds of insurance, such as hail or fire insurance on growing crops, should be included in gross income to the extent of the amount received in cash or its equivalent for the crop injured or destroyed. See section 451(d) for special rule relating to election to include crop insurance proceeds in income for taxable year following taxable year of destruction. For taxable years beginning after July 12, 1972, where a farmer is engaged in producing crops and the process of gathering and disposing of such crops is not completed within the taxable year in which such crops are planted, the income therefrom may, with the consent of the Commissioner (see section 446 and the regulations thereunder), be computed upon the crop method. For taxable years beginning on or before July 12, 1972, where a farmer is engaged in producing crops which take more than a year from the time of planting to the time of gathering and disposing, the income therefrom may, with the consent of the Commissioner (see section 446 and the regulations thereunder), be computed upon the crop method. In any case in which the crop method is used, the entire cost of producing the crop must be taken as a deduction for the year in which the gross income from the crop is realized, and not earlier.

(d) *Definition of ''farm''.* As used in this section, the term ''farm'' embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit, and truck farms; also plantations, ranches, and all land used for farming operations. All individuals, partnerships, or corporations that cultivate, operate, or manage farms for gain or profit, either as owners or tenants, are designated as farmers. For more detailed rules with respect to the determination of whether or not an individual is engaged in farming, see § 1.175–3. For rules applicable to persons cultivating or operating a farm for recreation or pleasure, see sections 162 and 165, and the regulations thereunder.

(e) *Cross references*. (1) For election to include Commodity Credit Corporation loans as income, see section 77 and regulations thereunder.

(2) For definition of gross income derived from farming for purposes of limiting deductibility of soil and water conservation expenditures, see section 175 and regulations thereunder.

(3) For definition of gross income from farming in connection with declarations of estimated income tax, see section 6073 and regulations thereunder.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7198, 37 FR 13679, July 13, 1972; T.D. 8729, 62 FR 44546, Aug. 22, 1997]

### § 1.61–5 Allocations by cooperative associations; per-unit retain certificates—tax treatment as to cooperatives and patrons.

(a) *In general*. Amounts allocated on the basis of the business done with or for a patron by a cooperative association, whether or not entitled to tax treatment under section 522, in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice or in some other manner disclosing to the patron the dollar amount allocated, shall be included in the computation of the gross income of such patron for the taxable year in which received to the extent prescribed in paragraph (b) of this section, regardless of whether the allocation is deemed, for the purpose of section 522, to be made at the close of a preceding taxable year of the cooperative association. The determination of the extent of taxability of such amounts is in no way dependent upon the method of accounting employed by the patron or upon the method, cash, accrual, or otherwise, upon which the taxable income of such patron is computed.

(b) *Extent of taxability*. (1) Amounts allocated to a patron on a patronage basis by a cooperative association with respect to products marketed for such patron, or with respect to supplies, equipment, or services, the cost of which was deductible by the patron under section 162 or section 212, shall be included in the computation of the gross income of such patron, as ordinary income, to the following extent:

(i) If the allocation is in cash, the amount of cash received.

(ii) If the allocation is in merchandise, the amount of the fair market value of such merchandise at the time of receipt by the patron.

(iii) If the allocation is in the form of revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or similar documents, the amount of the fair market value of such document at the time of its receipt by the patron. For purposes of this subdivision, any document containing an unconditional promise to pay a fixed sum of money on demand or at a fixed or determinable time shall be considered to have a fair market value at the time of its receipt by the patron, unless it is clearly established to the contrary. However, for purposes of this subdivision, any document which is payable only in the discretion of the cooperative association, or which is otherwise subject to conditions beyond the control of the patron, shall be considered not to have any fair market value at the time of its receipt by the patron, unless it is clearly established to the contrary.

(iv) If the allocation is in the form of capital stock, the amount of the fair market value, if any, of such capital stock at the time of its receipt by the patron.

(2) If any allocation to which subparagraph (1) of this paragraph applies is received in the form of a document of the type described in subparagraph (1) (iii) or (iv) of this paragraph and is redeemed in full or in part or is otherwise disposed of, there shall be included in the computation of the gross income of the patron, as ordinary income, in the year of redemption or

other disposition, the excess of the amount realized on the redemption or other disposition over the amount previously included in the computation of gross income under such subparagraph.

(3)(i) Amounts which are allocated on a patronage basis by a cooperative association with respect to supplies, equipment, or services, the cost of which was not deductible by the patron under section 162 or section 212, are not includible in the computation of the gross income of such patron. However, in the case of such amounts which are allocated with respect to capital assets (as defined in section 1221) or property used in the trade or business within the meaning of section 1231, such amounts shall, to the extent set forth in subparagraph (1) of this paragraph, be taken into account by such patron in determining the cost of the property to which the allocation relates. Notwithstanding the preceding sentence, to the extent that such amounts are in excess of the unrecovered cost of such property, and to the extent that such amounts relate to such property which the patron no longer owns, they shall be included in the computation of the gross income of such patron.

(ii) If any patronage dividend is allocated to the patron in the form of a document of the type described in subparagraph (1) (iii) or (iv) of this paragraph, and if such allocation is with respect to capital assets (as defined in section 1221) or property used in the trade or business within the meaning of section 1231, any amount realized on the redemption or other disposition of such document which is in excess of the amount which was taken into account upon the receipt of the document by the patron shall be taken into account by such patron in the year of redemption or other disposition as an adjustment to basis or as an inclusion in the computation of gross income, as the case may be.

(iii) Any adjustment to basis in respect of an amount to which subdivision (i) or (ii) of this subparagraph applies shall be made as of the first day of the taxable year in which such amount is received.

(iv) The application of the provisions of this subparagraph may be illustrated by the following examples:

*Example 1.* On July 1, 1959, P, a patron of a cooperative association, purchases a tractor for use in his farming business from such association for $2,200. The tractor has an estimated useful life of five years and an estimated salvage value of $200. P files his income tax returns on a calendar year basis and claims depreciation on the tractor for the year 1959 of $200 pursuant to his use of the straight-line method at the rate of $400 per year. On July 1, 1960, the cooperative association allocates to P with respect to his purchase of the tractor a dividend of $300 in cash. P will reduce his depreciation allowance with respect to the tractor for 1960 (and subsequent taxable years) to $333.33, determined as follows:

| | | |
|---|---|---|
| Cost of tractor, July 1, 1959 | | $2,200 |
| Less: | | |
| Depreciation for 1959 (6 mos.) | $200 | |
| Adjustment as of Jan. 1, 1960, for cash patronage dividend | 300 | |
| Salvage value | 200 | |
| | 700 | |
| Basis for depreciation for the remaining 4½ years of estimated life | | 1,500 |
| Basis for depreciation divided by the 4½ years of remaining life | | 333.33 |

*Example 2.* Assume the same facts as in example (1), except that on July 1, 1960, the cooperative association allocates a dividend to P with respect to his purchase of the tractor in the form of a revolving fund certificate having a face amount of $300. The certificate is redeemable in cash at the discretion of the directors of the association and is subject to diminution by any future losses of the association, and has no fair market value when received by P. Since the certificate had no fair market value when received by P, no amount with respect to such certificate was taken into account by him in the year 1960. In 1965, P receives $300 cash from the association in full redemption of the certificate. Prior to 1965, he had recovered through depreciation $2,000 of the cost of the tractor, leaving an unrecovered cost of $200 (the salvage value). For the year 1965, the redemption proceeds of $300 are applied against the unrecovered cost of $200, reducing the basis to zero, and the balance of the redemption proceeds, $100, is includible in the computation of P's gross income.

*Example 3.* Assume the same facts as in example (2), except that the certificate is redeemed in full on July 1, 1962. The full $300 received on redemption of the certificate will be applied against the unrecovered cost of the tractor as of January 1, 1962, computed as follows:

| | | |
|---|---|---|
| Cost of tractor, July 1, 1959 | | $2,200 |
| Less: | | |
| Depreciation for 1959 (6 mos.) | $200 | |
| Depreciation for 1960 | 400 | |
| Depreciation for 1961 | 400 | |

| | | |
|---|---|---|
| | | 1,000 |
| Unrecovered cost on Jan. 1, 1962 | | 1,200 |
| Adjustment as of Jan. 1, 1962, for proceeds of the redemption of the revolving fund certificate | | 300 |
| Unrecovered cost on Jan. 1, 1962, after adjustment | | 900 |
| Less: Salvage value | | 200 |
| Basis for depreciation on Jan. 1, 1962 | | 700 |
| If P uses the tractor in his business until June 30, 1964, he would be entitled to the following depreciation allowances with respect to the tractor: | | |
| For 1962 | 280 | |
| For 1963 | 280 | |
| For 1964 (6 mos.) | 140 | |
| | 700 | |
| Balance to be depreciated | | 0 |

*Example 4.* Assume the same facts as in example (3), except that P sells the tractor in 1961. The entire $300 received in 1962 in redemption of the revolving fund certificate is includible in the computation of P's gross income for the year 1962.

(c) *Special rule.* If, for any taxable year ending before December 3, 1959, a taxpayer treated any patronage dividend received in the form of a document described in paragraph (b) (1) (iii) or (iv) of this section in accordance with the regulations then applicable (whether such dividend is subject to paragraph (b) (1) or (3) of this section), such taxpayer is not required to change the treatment of such patronage dividends for any such prior taxable year. On the other hand, the taxpayer may, if he so desires, amend his income tax returns to treat the receipt of such patronage dividend in accordance with the provisions of this section, but no provision in this paragraph shall be construed as extending the period of limitations within which a claim for credit or refund may be filed under section 6511.

(d) *Per-unit retain certificates; tax treatment of cooperative associations; distribution and reinvestment alternative.* (1)(i) In the case of a taxable year to which this paragraph applies to a cooperative association, such association shall, in computing the amount paid or returned to a patron with respect to products marketed for such patron, take into account the stated dollar amount of any per-unit retain certificate (as defined in paragraph (g) of this section)—

(*a*) Which is issued during the payment period for such year (as defined in subparagraph (3) of this paragraph) with respect to such products,

(*b*) With respect to which the patron is a qualifying patron (as defined in subparagraph (2) of this paragraph), and

(*c*) Which clearly states the fact that the patron has agreed to treat the stated dollar amount thereof as representing a cash distribution to him which he has reinvested in the cooperative association.

(ii) No amount shall be taken into account by a cooperative association by reason of the issuance of a per-unit retain certificate to a patron who was not a qualifying patron with respect to such certificate. However, any amount paid in redemption of a per-unit retain certificate which was issued to a patron who was not a qualifying patron with respect to such certificate shall be taken into account by the cooperative in the year of redemption, as an amount paid or returned to such patron with respect to products marketed for him. This subdivision shall apply only to per-unit retain certificates issued with respect to taxable years of the cooperative association to which this paragraph applied to the association (that is, taxable years with respect to which per-unit retain certificates were issued to one or more patrons who are qualifying patrons).

(2)(i) A patron shall be considered to be a "qualifying patron" with respect to a per-unit retain certificate if there is in effect an agreement between the cooperative association and such patron which clearly provides that such patron agrees to treat the stated dollar amounts of all per-unit retain certificates issued to him by the association as representing cash distributions which he has constructively received and which he has, of his own choice, reinvested in the cooperative association. Such an agreement may be included in a by-law of the cooperative which is adopted prior to the time the products to which the per-unit retain certificates relate are marketed. However, except where there is in effect a "written agreement" described in subdivision (ii) of this subparagraph, a patron shall not be considered to be a "qualifying patron" with respect to a per-unit retain certificate if it has been established by a determination of the Tax Court of the United States, or any other court of competent jurisdiction, which has become final, that the stated dollar amount of such certificate, or of a similar certificate issued under similar circumstances to such patron or any other patron by the cooperative association, is not required to be included (as ordinary income) in the gross income of such patron, or such other patron, for the taxable year of the patron in which received.

(ii) The "written agreement" referred to in subdivision (i) of this subparagraph is an agreement in writing, signed by the patron, on file with the cooperative association, and revocable as provided in this subdivision. Unless such an agreement specifically provides to the contrary, it shall be effective for per-unit retain certificates issued with respect to the taxable year of the cooperative association in which the agreement is received by the association, and unless revoked, for per-unit retain certificates issued with respect to all subsequent taxable years. A "written agreement" must be revocable by the patron at any time after the close of the taxable year in which it is made. To be effective, a revocation must be in writing, signed by the patron, and furnished to the cooperative association. A revocation shall be effective only for per-unit retain certificates issued with respect to taxable years of the cooperative association following the taxable year in which it is furnished to the association. Notwithstanding the preceding sentence, a revocation shall not be effective for per-unit retain certificates issued with respect to products marketed for the patron under a pooling arrangement in which such patron participated before such revocation. The following is an example of an agreement which would meet the requirements of this subparagraph:

I agree that, for purposes of determining the amount I have received from this cooperative in payment for my goods, I shall treat the face amount of any per-unit retain certificates issued to me on and after ________ as representing a cash distribution which I have constructively received and which I have reinvested in the cooperative.

____________________

(*Signed*)

(3) For purposes of this paragraph and paragraph (e) of this section, the payment period for any taxable year of the cooperative is the period beginning with the first day of such taxable year and ending with the 15th day of the 9th month following the close of such year.

(4) This paragraph shall apply to any taxable year of a cooperative association if, with respect to such taxable year, the association has issued per-unit retain certificates to one or more of its patrons who are qualifying patrons with respect to such certificates within the meaning of subparagraph (2) of this paragraph.

(e) *Tax treatment of cooperative association; taxable years for which paragraph (d) does not apply*. (1) In the case of a taxable year to which paragraph (d) of this section does not apply to a cooperative association, such association shall, in computing the amount paid or returned to a patron with respect to products marketed for such patron, take into account the fair market value (at the time of issue) of any per-unit retain certificates which are issued by the association with respect to such products during the payment period for such taxable year.

(2) An amount paid in redemption of a per-unit retain certificate issued with respect to a taxable year of the cooperative association for which paragraph (d) of this section did not apply to the association, shall, to the extent such amount exceeds the fair market value of the certificate at the time of its issue, be taken into account by the association in the year of redemption, as an amount paid or returned to a patron with respect to products marketed for such patron.

(3) For purposes of this paragraph and paragraph (f)(2) of this section, any per-unit retain certificate containing an unconditional promise to pay a fixed sum of money on demand or at a fixed or determinable time shall be considered to have a fair market value at the time of its issue, unless it is clearly established to the contrary. On the other hand, any per-unit retain certificate (other than capital stock) which is redeemable only in the discretion of the cooperative association, or

which is otherwise subject to conditions beyond the control of the patron, shall be considered not to have any fair market value at the time of its issue, unless it is clearly established to the contrary.

(f) *Tax treatment of patron.* (1) The following rules apply for purposes of computing the amount includible in gross income with respect to a per-unit retain certificate which was issued to a patron by a cooperative association with respect to a taxable year of such association for which paragraph (d) of this section applies.

(i) If the patron is a qualifying patron with respect to such certificate (within the meaning of paragraph (d) (2) of this section), he shall, in accordance with his agreement, include (as ordinary income) the stated dollar amount of the certificate in gross income for his taxable year in which the certificate is received by him.

(ii) If the patron is not a qualifying patron with respect to such certificate, no amount is includible in gross income on the receipt of the certificate; however, any gain on the redemption, sale, or other disposition of such certificate shall, to the extent of the stated dollar amount thereof, be considered as gain from the sale or exchange of property which is not a capital asset.

(2) The amount of the fair market value of a per-unit retain certificate which is issued to a patron by a cooperative association with respect to a taxable year of the association for which paragraph (d) of this section does not apply shall be included, as ordinary income, in the gross income of the patron for the taxable year in which the certificate is received. Any gain on the redemption, sale, or other disposition of such a per-unit retain certificate shall, to the extent its stated dollar amount exceeds its fair market value at the time of issue, be treated as gain on the redemption, sale, or other disposition of property which is not a capital asset.

(g) *''Per-unit retain certificate'' defined.* For purposes of paragraphs (d), (e), and (f), of this section, the term ''per-unit retain certificate'' means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice—

(1) Which is issued to a patron with respect to products marketed for such patron;

(2) Which discloses to the patron the stated dollar amount allocated to him on the books of the cooperative association; and

(3) The stated dollar amount of which is fixed without reference to net earnings.

(h) *Effective date.* This section shall not apply to any amount the tax treatment of which is prescribed in section 1385 and §1.1385–1. Paragraphs (d), (e), and (f) of this section shall apply to per-unit retain certificates as defined in paragraph (g) of this section issued by a cooperative association during taxable years of the association beginning after April 30, 1966, with respect to products marketed for patrons during such years.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6855, 30 FR 13134, Oct. 15, 1965]

### § 1.61–6 Gains derived from dealings in property.

(a) *In general.* Gain realized on the sale or exchange of property is included in gross income, unless excluded by law. For this purpose property includes tangible items, such as a building, and intangible items, such as goodwill. Generally, the gain is the excess of the amount realized over the unrecovered cost or other basis for the property sold or exchanged. The specific rules for computing the amount of gain or loss are contained in section 1001 and the regulations thereunder. When a part of a larger property is sold, the cost or other basis of the entire property shall be equitably apportioned among the several parts, and the gain realized or loss sustained on the part of the entire property sold is the difference between the selling price and the cost or other basis allocated to such part. The sale of each part is treated as a separate transaction and gain or loss shall be computed separately on each part. Thus, gain or loss shall be determined at the time of sale of each part and not deferred until the entire property has been disposed of.

This rule may be illustrated by the following examples:

*Example 1.* A, a dealer in real estate, acquires a 10-acre tract for $10,000, which he divides into 20 lots. The $10,000 cost must be equitably apportioned among the lots so that on the sale of each A can determine his taxable gain or deductible loss.

*Example 2.* B purchases for $25,000 property consisting of a used car lot and adjoining filling station. At the time, the fair market value of the filling station is $15,000 and the fair market value of the used car lot is $10,000. Five years later B sells the filling station for $20,000 at a time when $2,000 has been properly allowed as depreciation thereon. B's gain on this sale is $7,000, since $7,000 is the amount by which the selling price of the filling station exceeds the portion of the cost equitably allocable to the filling station at the time of purchase reduced by the depreciation properly allowed.

(b) *Nontaxable exchanges.* Certain realized gains or losses on the sale or exchange of property are not "recognized", that is, are not included in or deducted from gross income at the time the transaction occurs. Gain or loss from such sales or exchanges is generally recognized at some later time. Examples of such sales or exchanges are the following:

(1) Certain formations, reorganizations, and liquidations of corporations, see sections 331, 333, 337, 351, 354, 355, and 361;

(2) Certain formations and distributions of partnerships, see sections 721 and 731;

(3) Exchange of certain property held for productive use or investment for property of like kind, see section 1031;

(4) A corporation's exchange of its stock for property, see section 1032;

(5) Certain involuntary conversions of property if replaced, see section 1033;

(6) Sale or exchange of residence if replaced, see section 1034;

(7) Certain exchanges of insurance policies and annuity contracts, see section 1035; and

(8) Certain exchanges of stock for stock in the same corporation, see section 1036.

(c) *Character of recognized gain.* Under Subchapter P, Chapter 1 of the Code, relating to capital gains and losses, certain gains derived from dealings in property are treated specially, and under certain circumstances the maximum rate of tax on such gains is 25 percent, as provided in section 1201. Generally, the property subject to this treatment is a "capital asset", or treated as a "capital asset". For definition of such assets, see sections 1221 and 1231, and the regulations thereunder. For some of the rules either granting or denying this special treatment, see the following sections and the regulations thereunder:

(1) Transactions between partner and partnership, section 707;

(2) Sale or exchange of property used in the trade or business and involuntary conversions, section 1231;

(3) Payment of bonds and other evidences of indebtedness, section 1232;

(4) Gains and losses from short sales, section 1233;

(5) Options to buy or sell, section 1234;

(6) Sale or exchange of patents, section 1235;

(7) Securities sold by dealers in securities, section 1236;

(8) Real property subdivided for sale, section 1237;

(9) Amortization in excess of depreciation, section 1238;

(10) Gain from sale of certain property between spouses or between an individual and a controlled corporation, section 1239;

(11) Taxability to employee of termination payments, section 1240.

### § 1.61–7 Interest.

(a) *In general.* As a general rule, interest received by or credited to the taxpayer constitutes gross income and is fully taxable. Interest income includes interest on savings or other bank deposits; interest on coupon bonds; interest on an open account, a promissory note, a mortgage, or a corporate bond or debenture; the interest portion of a condemnation award; usurious interest (unless by State law it is automatically converted to a payment on the principal); interest on legacies; interest on life insurance proceeds held under an agreement to pay interest thereon; and interest on refunds of Federal taxes. For rules determining the taxable year in which interest, including interest accrued or constructively received, is included in gross income, see section 451 and the regulations thereunder. For the inclusion of interest in income for the purpose of the retirement income credit, see section 37 and the regulations thereunder. For credit of tax withheld at source on interest on tax-free covenant bonds, see section 32 and the regulations thereunder. For rules relating to interest on certain deferred payments, see section 483 and the regulations thereunder.

(b) *Interest on Government obligations*—(1) *Wholly tax-exempt interest.* Interest upon the obligations of a State, Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia, is wholly exempt from tax. Interest on certain United States obligations issued before March 1, 1941, is exempt from tax to the extent provided in the acts of Congress authorizing the various issues. See section 103 and the regulations thereunder.

(2) *Partially tax-exempt interest.* Interest earned on certain United States obligations is partly tax exempt and partly taxable. For example, the interest on United States Treasury bonds issued before March 1, 1941, to the extent that the principal of such bonds exceeds $5,000, is exempt from normal tax but is subject to surtax. See sections 35 and 103, and the regulations thereunder.

(3) *Fully taxable interest.* In general, interest on United States obligations issued on or after March 1, 1941, and obligations issued by any agency or instrumentality of the United States after that date, is fully taxable; but see section 103 and the regulations thereunder. A taxpayer using the cash receipts and disbursements method of accounting who owns United States savings bonds issued at a discount has an election as to when he will report the interest; see section 454 and the regulations thereunder.

(c) *Obligations bought at a discount; bonds bought when interest defaulted or accrued.* When notes, bonds, or other certificates of indebtedness are issued by a corporation or the Government at a discount and are later redeemed by the debtor at the face amount, the original discount is interest, except as otherwise provided by law. See also paragraph (b) of this section for the rules relating to Government bonds. If a taxpayer purchases bonds when interest has been defaulted or when the interest has accrued but has not been paid, any interest which is in arrears but has accrued at the time of purchase is not income and is not taxable as interest if subsequently paid. Such payments are returns of capital which reduce the remaining cost basis. Interest which accrues after the date of purchase, however, is taxable interest income for the year in which received or accrued (depending on the method of accounting used by the taxpayer).

(d) *Bonds sold between interest dates; amounts received in excess of original issue discount; interest on life insurance.* When bonds are sold between interest dates, part of the sales price represents interest accrued to the date of the sale and must be reported as interest income. Amounts received in excess of the original issue discount upon the retirement or sale of a bond or other evidence of indebtedness may under some circumstances constitute capital gain instead of ordinary income. See section 1232 and the regulations thereunder. Interest payments on amounts payable as employees' death benefits (whether or not section 101(b) applies thereto) and on the proceeds of life insurance policies payable by reason of the insured's death constitute gross income under some circumstances. See section 101 and the regulations thereunder for details. Where accrued interest on unwithdrawn insurance policy dividends is credited annually and is subject to withdrawal annually by the taxpayer, such interest credits constitute gross income to such taxpayer as of the year of credit. However, if under the terms of the insurance policy the interest on unwithdrawn policy dividends is subject to withdrawal only on the anniversary date of the policy (or some other date specified therein), then such interest shall constitute gross income to the taxpayer for the taxable year in which such anniversary date (or other specified date) falls.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6723, 29 FR 5342, Apr. 21, 1964; T.D. 6873, 31 FR 941, Jan. 25, 1966]

**§ 1.61–8 Rents and royalties.**

(a) *In general.* Gross income includes rentals received or accrued for the occupancy of real estate or the use of personal property. For the inclusion of rents in income for the purpose of the retirement income credit, see section 37 and the regulations thereunder. Gross income includes royalties. Royalties may be received from books, stories, plays, copyrights, trademarks, formulas, patents, and from the exploitation of natural resources, such as coal, gas, oil, copper, or timber. Payments received as a result of the transfer of patent rights may under some circumstances constitute capital gain instead of ordinary income. See section 1235 and the regulations thereunder. For special rules for certain income from natural resources, see Subchapter I (section 611 and following), Chapter 1 of the Code, and the regulations thereunder.

(b) *Advance rentals; cancellation payments.* Except as provided in section 467 and the regulations thereunder and except as otherwise provided by the Commissioner in published guidance (see §601.601(d)(2) of this chapter), gross income includes advance rentals, which must be included in income for the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. An amount received by a lessor from a lessee for cancelling a lease constitutes gross income for the year in which it is received, since it is essentially a substitute for rental payments. As to amounts received by a lessee for the cancellation of a lease, see section 1241 and the regulations thereunder.

(c) *Expenditures by lessee.* As a general rule, if a lessee pays any of the expenses of his lessor such payments are additional rental income of the lessor. If a lessee places improvements on real estate which constitute, in whole or in part, a substitute for rent, such improvements constitute rental income to the lessor. Whether or not improvements made by a lessee result in rental income to the lessor in a particular case depends upon the intention of the parties, which may be indicated either by the terms of the lease or by the surrounding circumstances. For the exclusion from gross income of income (other than rent) derived by a lessor of real property on the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by a lessee, see section 109 and the regulations thereunder. For the exclusion from gross income of a lessor corporation of certain of its income taxes on rental income paid by a lessee corporation under a lease entered into before January 1, 1954, see section 110 and the regulations thereunder.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8820, 64 FR 26851, May 18, 1999; T.D. 9135, 69 FR 41192, July 8, 2004]

**§ 1.61–9 Dividends.**

(a) *In general.* Except as otherwise specifically provided, dividends are included in gross income under sections 61 and 301. For the principal rules with respect to dividends includible in gross income, see section 316 and the regulations thereunder. As to distributions made or deemed to be made by regulated investment companies, see sections 851 through 855, and the regulations thereunder. As to distributions made by real estate investment trusts, see sections 856 through 858, and the regulations thereunder. See section 116 for the exclusion from gross income of $100 ($50 for dividends received in taxable years beginning before January 1, 1964) of dividends received by an individual, except those from certain corporations. Furthermore, dividends may give rise to a credit against tax under section 34, relating to dividends received by individuals (for dividends received on or before December 31, 1964), and under section 37, relating to retirement income.

(b) *Dividends in kind; stock dividends; stock redemptions.* Gross income includes dividends in property other than cash, as well as cash dividends. For amounts to be included in gross income when distributions of property are made, see section 301 and the regulations thereunder. A distribution of stock, or rights to acquire stock, in the corporation making the distribution is not a dividend except under the circumstances described in section 305(b). However, the term ‘‘dividend’’ includes a distribution of stock, or rights to acquire stock, in a corporation other than the corporation making the distribution. For determining when distributions in complete liquidation shall be treated as dividends, see section 333 and the regulations thereunder. For rules determining when amounts received in exchanges under section 354 or exchanges and distributions under section 355 shall be treated as dividends, see section 356 and the regulations thereunder.

(c) *Dividends on stock sold.* When stock is sold, and a dividend is both declared and paid after the sale, such dividend is not gross income to the seller. When stock is sold after the declaration of a dividend and after the date as of which the seller becomes entitled to the dividend, the dividend ordinarily is income to the seller. When stock is sold between the time of declaration and the time of payment of the dividend, and the sale takes place at such time that the purchaser becomes entitled to the dividend, the dividend ordinarily is income to him. The fact that the purchaser may have included the amount of the dividend in his purchase price in contemplation of receiving the dividend does not exempt him from tax. Nor can the purchaser deduct the added amount he advanced to the seller in anticipation of the dividend. That added amount is merely part of the purchase price of the stock. In some cases, however, the purchaser may be considered to be the recipient of the dividend even though he has not received the legal title to the stock itself and does not himself receive the dividend. For example, if the seller retains the legal title to the stock as trustee solely for the purpose of securing the payment of the purchase price, with the understanding that he is to apply the dividends received from time to time in reduction of the purchase price, the dividends are considered to be income to the purchaser.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6777, 29 FR 17807, Dec. 16, 1964]

### § 1.61–10 Alimony and separate maintenance payments; annuities; income from life insurance and endowment contracts.

(a) *In general.* Alimony and separate maintenance payments, annuities, and income from life insurance and endowment contracts in general constitute gross income, unless excluded by law. Annuities paid by religious, charitable, and educational corporations are generally taxable to the same extent as other annuities. An annuity charged upon devised land is taxable to the donee-annuitant to the extent that it becomes payable out of the rents or other income of the land, whether or not it is a charge upon the income of the land.

(b) *Cross references.* For the detailed rules relating to—

(1) Alimony and separate maintenance payments, see section 71 and the regulations thereunder;

(2) Annuities, certain proceeds of endowment and life insurance contracts, see section 72 and the regulations thereunder;

(3) Life insurance proceeds paid by reason of death of insured, employees' death benefits, see section 101 and the regulations thereunder;

(4) Annuities paid by employees' trusts, see section 402 and the regulations thereunder;

(5) Annuities purchased for employee by employer, see section 403 and the regulations thereunder.

### § 1.61–11 Pensions.

(a) *In general.* Pensions and retirement allowances paid either by the Government or by private persons constitute gross income unless excluded by law. Usually, where the taxpayer did not contribute to the cost of a pension and was not taxable on his employer's contributions, the full amount of the pension is to be included in his gross income. But see sections 72, 402, and 403, and the regulations thereunder. When amounts are received from other types of pensions, a portion of the payment may be excluded from gross income. Under some circumstances, amounts distributed from a pension plan in excess of the employee's contributions may constitute long-term capital gain, rather than ordinary income.

(b) *Cross references.* For the inclusion of pensions in income for the purpose of the retirement income credit, see section 37 and the regulations thereunder. Detailed rules concerning the extent to which pensions and retirement allowances are to be included in or excluded from gross income are contained in other sections of the Code and the regulations thereunder. Amounts received as pensions or annuities under the Social Security Act (42 U.S.C. ch. 7) or the Railroad Retirement Act (45 U.S.C. ch. 9) are excluded from gross income. For other partial and total exclusions from gross income, see the following:

(1) Annuities in general, section 72 and the regulations thereunder;

(2) Employees' annuities, sections 402 and 403 and the regulations thereunder;

(3) References to other acts of Congress exempting veterans' pensions and railroad retirement annuities and pensions, section 122.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6856, 30 FR 13316, Oct. 20, 1965]

### § 1.61–12 Income from discharge of indebtedness.

(a) *In general.* The discharge of indebtedness, in whole or in part, may result in the realization of income. If, for example, an individual performs services for a creditor, who in consideration thereof cancels the debt, the debtor realizes income in the amount of the debt as compensation for his services. A taxpayer may realize income by the payment or purchase of his obligations at less than their face value. In general, if a shareholder in a corporation which is indebted to him gratuitously forgives the debt, the transaction amounts to a contribution to the capital of the corporation to the extent of the principal of the debt.

(b) *Proceedings under Bankruptcy Act.* (1) Income is not realized by a taxpayer by virtue of the discharge, under section 14 of the Bankruptcy Act (11 U.S.C. 32), of his indebtedness as the result of an adjudication in bankruptcy, or by virtue of an agreement among his creditors not consummated under any provision of the Bankruptcy Act, if immediately thereafter the taxpayer's liabilities exceed the value of his assets. Furthermore, unless one of the principal purposes of seeking a confirmation under the Bankruptcy Act is the avoidance of income tax, income is not realized by a taxpayer in the case of a cancellation or reduction of his indebtedness under—

(i) A plan of corporate reorganization confirmed under Chapter X of the Bankruptcy Act (11 U.S.C., ch. 10);

(ii) An ''arrangement'' or a ''real property arrangement'' confirmed under Chapter XI or XII, respectively, of the Bankruptcy Act (11 U.S.C., ch. 11, 12); or

(iii) A ''wage earner's plan'' confirmed under Chapter XIII of the Bankruptcy Act (11 U.S.C., ch. 13).

(2) For adjustment of basis of certain property in the case of cancellation or reduction of indebtedness resulting from a proceeding under the Bankruptcy Act, see the regulations under section 1016.

(c) *Issuance and repurchase of debt instruments*—(1) *Issuance.* An issuer does not realize gain or loss upon the issuance of a debt instrument. For rules relating to an issuer's interest deduction for a debt instrument issued with bond issuance premium, see §1.163–13.

(2) *Repurchase*—(i) *In general.* An issuer does not realize gain or loss upon the repurchase of a debt instrument. However, if a debt instrument provides for payments denominated in, or determined by reference to, a nonfunctional currency, an issuer may realize a currency gain or loss upon the repurchase of the instrument. See section 988 and the regulations thereunder. For purposes of this paragraph (c)(2), the term *repurchase* includes the retirement of a debt instrument, the conversion of a debt instrument into stock of the issuer, and the exchange (including an exchange under section 1001) of a newly issued debt instrument for an existing debt instrument.

(ii) *Repurchase at a discount.* An issuer realizes income from the discharge of indebtedness upon the repurchase of a debt instrument for an amount less than its adjusted issue price (within the meaning of §1.1275–

1(b)). The amount of discharge of indebtedness income is equal to the excess of the adjusted issue price over the repurchase price. See section 108 and the regulations thereunder for additional rules relating to income from discharge of indebtedness. For example, to determine the repurchase price of a debt instrument that is repurchased through the issuance of a new debt instrument, see section 108(e)(10).

(iii) *Repurchase at a premium.* An issuer may be entitled to a repurchase premium deduction upon the repurchase of a debt instrument for an amount greater than its adjusted issue price (within the meaning of §1.1275–1(b)). See §1.163–7(c) for the treatment of repurchase premium.

(iv) *Effective date.* This paragraph (c)(2) applies to debt instruments repurchased on or after March 2, 1998.

(d) *Cross references.* For exclusion from gross income of—

(1) Income from discharge of indebtedness in certain cases, see sections 108 and 1017, and regulations thereunder;

(2) Forgiveness of Government payments to encourage exploration, development, and mining for defense purposes, see section 621 and regulations thereunder.

(e) *Cross reference.* For rules relating to the treatment of liabilities on the sale or other disposition of encumbered property, see §1.1001–2.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6984, 33 FR 19174, Dec. 24, 1968; T.D. 7741, 45 FR 81745, Dec. 12, 1980; T.D. 8746, 62 FR 68175, Dec. 31, 1997]

### § 1.61–13 Distributive share of partnership gross income; income in respect of a decedent; income from an interest in an estate or trust.

(a) *In general.* A partner's distributive share of partnership gross income (under section 702(c)) constitutes gross income to him. Income in respect of a decedent (under section 691) constitutes gross income to the recipient. Income from an interest in an estate or trust constitutes gross income under the detailed rules of Part I (section 641 and following), Subchapter J, Chapter 1 of the Code. In many cases, these sections also determine who is to include in his gross income the income from an estate or trust.

(b) *Creation of sinking fund by corporation.* If a corporation, for the sole purpose of securing the payment of its bonds or other indebtedness, places property in trust or sets aside certain amounts in a sinking fund under the control of a trustee who may be authorized to invest and reinvest such sums from time to time, the property or fund thus set aside by the corporation and held by the trustee is an asset of the corporation, and any gain arising therefrom is income of the corporation and shall be included as such in its gross income.

### § 1.61–14 Miscellaneous items of gross income.

(a) *In general.* In addition to the items enumerated in section 61(a), there are many other kinds of gross income. For example, punitive damages such as treble damages under the antitrust laws and exemplary damages for fraud are gross income. Another person's payment of the taxpayer's income taxes constitutes gross income to the taxpayer unless excluded by law. Illegal gains constitute gross income. Treasure trove, to the extent of its value in United States currency, constitutes gross income for the taxable year in which it is reduced to undisputed possession.

(b) *Cross references.* (1) Prizes and awards, see section 74 and regulations thereunder;

(2) Damages for personal injury or sickness, see section 104 and the regulations thereunder;

(3) Income taxes paid by lessee corporation, see section 110 and regulations thereunder;

(4) Scholarships and fellowship grants, see section 117 and regulations thereunder;

(5) Miscellaneous exemptions under other acts of Congress, see section 122;

(6) Tax-free covenant bonds, see section 1451 and regulations thereunder.

(7) Notional principal contracts, see §1.446–3.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6856, 30 FR 13316, Oct. 20, 1965; T.D. 8491, 58 FR 53127, Oct. 14, 1993]

**§ 1.61–15 Options received as payment of income.**

(a) *In general.* Except as otherwise provided in § 1.61–2(d)(6)(i) (relating to certain restricted property transferred after June 30, 1969), if any person receives an option in payment of an amount constituting compensation of such person (or any other person), such option is subject to the rules contained in § 1.421–6 for purposes of determining when income is realized in connection with such option and the amount of such income. In this regard, the rules of § 1.421–6 apply to an option received in payment of an amount constituting compensation regardless of the form of the transaction. Thus, the rules of § 1.421–6 apply to an option transferred for less than its fair market value in a transaction taking the form of a sale or exchange if the difference between the amount paid for the option and its fair market value at the time of transfer is the payment of an amount constituting compensation of the transferee or any other person. This section, for example, makes the rules of § 1.421–6 applicable to options granted in whole or partial payment for services of an independent contractor. If an amount of money or property is paid for an option to which this paragraph applies, then the amount paid shall be part of the basis of such option.

(b) *Options to which paragraph (a) does not apply.* (1) Paragraph (a) of this section does not apply to:

(i) An option which is subject to the rules contained in section 421; and

(ii) An option which is not granted as the payment of an amount constituting compensation, such as an option which is acquired solely as an investment (including an option which is part of an investment unit described in paragraph (b) of § 1.1232–3). For rules relating to the taxation of options described in this subdivision, see section 1234 and the regulations thereunder.

(2) If a person acquires an option which is not subject to the rules contained in section 421, and if such option has a readily ascertainable fair market value, such person may establish that such option was not acquired as payment of an amount constituting compensation by showing that the amount of money or its equivalent paid for the option equaled the readily ascertainable fair market value of the option. If a person acquires an option which is not subject to the rules contained in section 421, and if such option does not have a readily ascertainable fair market value, then to establish that such option was not acquired as payment of an amount constituting compensation, such person must show that, from an examination of all the surrounding circumstances, there was no reason for the option to have been granted as the payment of an amount constituting compensation. For example, such person must show that he had neither rendered nor was obligated to render substantial services in consideration for the granting of the option. In determining whether an option, such as an option acquired in connection with an obligation as part of an investment unit, has been granted as compensation for services, the ordinary services performed by an investor in his own self-interest in connection with his investing activities will not be treated as the consideration for the grant of the option. For example, if a small business investment company takes an active part in the management of its debtor small business company, the rendering of such management services will not be treated as the consideration for the granting of the option, provided such services are rendered for an independent consideration, or are merely protective of the small business investment company's investment in the borrower. See paragraph (c) of § 1.421–6 for the meaning of the term ''readily ascertainable fair market value.''

(c) *Statement required in connection with certain options.* (1) Any person acquiring any option to purchase securities (other than an option described in subparagraph (2) of this paragraph) shall attach a statement to his income tax return for the taxable year in which the option was acquired. For the definition of the term ''securities'', see section 165(g)(2).

(2) The statement otherwise required by subparagraph (1) of this paragraph shall not be required with respect to the following options:

(i) Options subject to the rules contained in section 305(a) or section 421;

(ii) Options acquired as part of an investment unit consisting of an option and a debenture, note, or other similar obligation—

(*a*) If such unit is acquired as part of a public offering and the amount of money or its equivalent paid for such unit is not less than the public offering price, or

(*b*) If such unit is actively traded on an established market and the amount of money or its equivalent paid for such unit is not less than the price paid for such unit in contemporaneous purchases of such unit by persons independent of both the seller and the taxpayer;

(iii) Options acquired as part of a public offering, if the amount of money or its equivalent paid for such option is not less than the public offering price; and

(iv) Options which are actively traded on an established market and which are acquired for money or its equivalent at a price not less than the price paid for such options in contemporaneous purchases of such options by persons independent of both the seller and the taxpayer.

(3) The statement required by subparagraph (1) of this paragraph shall contain the following information:

(i) Name and address of the taxpayer;

(ii) Description of the securities subject to the option (including number of shares of stock);

(iii) Period during which the option is exercisable;

(iv) Whether the option had a readily ascertainable fair market value at date of grant; and

(v) Whether the option is subject to paragraph (a) of this section.

(4) If the statement required by subparagraph (1) of this paragraph indicates either that the option is not subject to paragraph (a) of this section, or that the option is subject to paragraph (a) of this section but that such option had a readily ascertainable fair market value at date of grant, then such statement shall contain the following additional information:

(i) Option price;

(ii) Value at date of grant of securities subject to the option;

(iii) Restrictions (if any) on exercise or transfer of option;

(iv) Restrictions (if any) on transfer of securities subject to the option;

(v) Value of the option (if readily ascertainable);

(vi) How value of option was determined;

(vii) Amount of money (or its equivalent) paid for the option;

(viii) Person from whom the option was acquired;

(ix) A concise description of the circumstances surrounding the acquisition of the option and any other factors relied upon by the taxpayer to establish that the option is not subject to paragraph (a) of this section, or, if the option is treated by the taxpayer as subject to paragraph (a) of this section, that the option had a readily ascertainable fair market value at date of grant.

(d) *Effective date.* This section shall apply to options granted after July 11, 1963, other than options required to be granted pursuant to the terms of a written contract entered into on or before such date.

[T.D. 6696, 28 FR 13450, Dec. 12, 1963, as amended by T.D. 6706, 29 FR 2911, Mar. 3, 1964; T.D. 6984, 33 FR 19175, Dec. 24, 1968; T.D. 7554, 43 FR 31913, July 24, 1978]

## § 1.61–21 Taxation of fringe benefits.

(a) *Fringe benefits*—(1) *In general.* Section 61(a)(1) provides that, except as otherwise provided in subtitle A of the Internal Revenue Code of 1986, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. For an outline of the regulations under this section relating to fringe benefits, see paragraph (a)(7) of this section. Examples of fringe benefits include: an employer-provided automobile, a flight on an employer-provided aircraft, an employer-provided free or discounted commercial airline flight, an employer-provided vacation, an employer-provided discount on property or services, an employer-provided membership in a country club or other social club, and an employer-provided ticket to an entertainment or sporting event.

(2) *Fringe benefits excluded from income.* To the extent that a particular fringe benefit is specifically excluded from gross income pursuant to another section of subtitle A of the Internal

Revenue Code of 1986, that section shall govern the treatment of that fringe benefit. Thus, if the requirements of the governing section are satisfied, the fringe benefits may be excludable from gross income. Examples of excludable fringe benefits include qualified tuition reductions provided to an employee (section 117(d)); meals or lodging furnished to an employee for the convenience of the employer (section 119); benefits provided under a dependent care assistance program (section 129); and no-additional-cost services, qualified employee discounts, working condition fringes, and de minimis fringes (section 132). Similarly, the value of the use by an employee of an employer-provided vehicle or a flight provided to an employee on an employer-provided aircraft may be excludable from income under section 105 (because, for example, the transportation is provided for medical reasons) if and to the extent that the requirements of that section are satisfied. Section 134 excludes from gross income ''qualified military benefits.'' An example of a benefit that is not a qualified military benefit is the personal use of an employer-provided vehicle. The fact that another section of subtitle A of the Internal Revenue Code addresses the taxation of a particular fringe benefit will not preclude section 61 and the regulations thereunder from applying, to the extent that they are not inconsistent with such other section. For example, many fringe benefits specifically addressed in other sections of subtitle A of the Internal Revenue Code are excluded from gross income only to the extent that they do not exceed specific dollar or percentage limits, or only if certain other requirements are met. If the limits are exceeded or the requirements are not met, some or all of the fringe benefit may be includible in gross income pursuant to section 61. See paragraph (b)(3) of this section.

(3) *Compensation for services.* A fringe benefit provided in connection with the performance of services shall be considered to have been provided as compensation for such services. Refraining from the performance of services (such as pursuant to a covenant not to compete) is deemed to be the performance of services for purposes of this section.

(4) *Person to whom fringe benefit is taxable*—(i) *In general.* A taxable fringe benefit is included in the income of the person performing the services in connection with which the fringe benefit is furnished. Thus, a fringe benefit may be taxable to a person even though that person did not actually receive the fringe benefit. If a fringe benefit is furnished to someone other than the service provider such benefit is considered in this section as furnished to the service provider, and use by the other person is considered use by the service provider. For example, the provision of an automobile by an employer to an employee's spouse in connection with the performance of services by the employee is taxable to the employee. The automobile is considered available to the employee and use by the employee's spouse is considered use by the employee.

(ii) *All persons to whom benefits are taxable referred to as employees.* The person to whom a fringe benefit is taxable need not be an employee of the provider of the fringe benefit, but may be, for example, a partner, director, or an independent contractor. For convenience, the term ''employee'' includes any person performing services in connection with which a fringe benefit is furnished, unless otherwise specifically provided in this section.

(5) *Provider of a fringe benefit referred to as an employer.* The ''provider'' of a fringe benefit is that person for whom the services are performed, regardless of whether that person actually provides the fringe benefit to the recipient. The provider of a fringe benefit need not be the employer of the recipient of the fringe benefit, but may be, for example, a client or customer of the employer or of an independent contractor. For convenience, the term ''employer'' includes any provider of a fringe benefit in connection with payment for the performance of services, unless otherwise specifically provided in this section.

(6) *Effective date.* Except as otherwise provided, this section is effective as of January 1, 1989 with respect to fringe benefits provided after December 31, 1988. See §1.61–2T for rules in effect from January 1, 1985, to December 31, 1988.

(7) *Outline of this section*. The following is an outline of the regulations in this section relating to fringe benefits:



(b) *Valuation of fringe benefits*—(1) *In general*. An employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of—

(i) The amount, if any, paid for the benefit by or on behalf of the recipient, and

(ii) The amount, if any, specifically excluded from gross income by some other section of subtitle A of the Internal Revenue Code of 1986.

Therefore, for example, if the employee pays fair market value for what is received, no amount is includible in the gross income of the employee. In general, the determination of the fair market value of a fringe benefit must be made before subtracting out the amount, if any, paid for the benefit and the amount, if any, specifically excluded from gross income by another section of subtitle A. See paragraphs (d)(2)(ii) and (e)(1)(iii) of this section.

(2) *Fair market value.* In general, fair market value is determined on the basis of all the facts and circumstances. Specifically, the fair market value of a fringe benefit is the amount that an individual would have to pay for the particular fringe benefit in an arm's-length transaction. Thus, for example, the effect of any special relationship that may exist between the employer and the employee must be disregarded. Similarly, an employee's subjective perception of the value of a fringe benefit is not relevant to the determination of the fringe benefit's fair market value nor is the cost incurred by the employer determinative of its fair market value. For special rules relating to the valuation of certain fringe benefits, see paragraph (c) of this section.

(3) *Exclusion from income based on cost.* If a statutory exclusion phrased in terms of cost applies to the provision of a fringe benefit, section 61 does not require the inclusion in the recipient's gross income of the difference between the fair market value and the excludable cost of that fringe benefit. For example, section 129 provides an exclusion from an employee's gross income for amounts contributed by an employer to a dependent care assistance program for employees. Even if the fair market value of the dependent care assistance exceeds the employer's cost, the excess is not subject to inclusion under section 61 and this section. However, if the statutory cost exclusion is a limited amount, the fair market value of the fringe benefit attributable to any excess cost is subject to inclusion. This would be the case, for example, where an employer pays or incurs a cost of more than $5,000 to provide dependent care assistance to an employee.

(4) *Fair market value of the availability of an employer-provided vehicle*—(i) *In general.* If the vehicle special valuation rules of paragraph (d), (e), or (f) of this section do not apply with respect to an employer-provided vehicle, the value of the availability of that vehicle is determined under the general valuation principles set forth in this section. In general, that value equals the amount that an individual would have to pay in an arm's-length transaction to lease the same or comparable vehicle on the same or comparable conditions in the geographic area in which the vehicle is available for use. An example of a comparable condition is the amount of time that the vehicle is available to the employee for use, e.g., a one-year period. Unless the employee can substantiate that the same or comparable vehicle could have been leased on a cents-per-mile basis, the value of the availability of the vehicle cannot be computed by applying a cents-per-mile rate to the number of miles the vehicle is driven.

(ii) *Certain equipment excluded.* The fair market value of a vehicle does not include the fair market value of any specialized equipment not susceptible to personal use or any telephone that is added to or carried in the vehicle, provided that the presence of that equipment or telephone is necessitated by, and attributable to, the business needs of the employer. However, the value of specialized equipment must be included, if the employee to whom the vehicle is available uses the specialized equipment in a trade or business of the employee other than the employee's trade or business of being an employee of the employer.

(5) *Fair market value of chauffeur services*—(i) *Determination of value*—(A) *In general.* The fair market value of chauffeur services provided to the employee by the employer is the amount that an individual would have to pay in an arm's-length transaction to obtain the same or comparable chauffeur services in the geographic area for the period in which the services are provided. In determining the applicable fair market value, the amount of time, if any, the chauffeur remains on-call to perform chauffeur services must be included. For example, assume that A, an employee of corporation M, needs a chauffeur to be on-call to provide services to A during a twenty-four hour period. If during that twenty-four hour period, the chauffeur actually drives A for only six hours, the fair market value of the chauffeur services would have to be the value of having a chauffeur on-call

for a twenty-four hour period. The cost of taxi fare or limousine service for the six hours the chauffeur actually drove A would not be an accurate measure of the fair market value of chauffeur services provided to A. Moreover, all other aspects of the chauffeur's services (including any special qualifications of the chauffeur (e.g., training in evasive driving skills) or the ability of the employee to choose the particular chauffeur) must be taken into consideration.

(B) *Alternative valuation with reference to compensation paid.* Alternatively, the fair market value of the chauffeur services may be determined by reference to the compensation (as defined in paragraph (b)(5)(ii) of this section) received by the chauffeur from the employer.

(C) *Separate valuation for chauffeur services.* The value of chauffeur services is determined separately from the value of the availability of an employer-provided vehicle.

(ii) *Definition of compensation*—(A) *In general.* For purposes of this paragraph (b)(5)(ii), the term ''compensation'' means compensation as defined in section 414(q)(7) and the fair market value of nontaxable lodging (if any) provided by the employer to the chauffeur in the current year.

(B) *Adjustments to compensation*—For purposes of this paragraph (b)(5)(ii), a chauffeur's compensation is reduced proportionately to reflect the amount of time during which the chauffeur performs substantial services for the employer other than as a chauffeur and is not on-call as a chauffeur. For example, assume a chauffeur is paid $25,000 a year for working a ten-hour day, five days a week and also receives $5,000 in nontaxable lodging. Further assume that during four hours of each day, the chauffeur is not on-call to perform services as a chauffeur because that individual is performing secretarial functions for the employer. Then, for purposes of determining the fair market value of this chauffeur's services, the employer may reduce the chauffeur's compensation by $\frac{4}{10}$ or $12,000 (.4× ($25,000+$5,000) = $12,000). Therefore, in this example, the fair market value of the chauffeur's services is $18,000 ($30,000 −$12,000). However, for purposes of this paragraph (b)(5)(ii), a chauffeur's compensation is not to be reduced by any amounts paid to the chauffeur for time spent ''on-call,'' even though the chauffeur actually performs other services for the employer during such time. For purposes of this paragraph (b)(5)(ii), a determination that a chauffeur is performing substantial services for the employer other than as a chauffeur is based upon the facts and circumstances of each situation. An employee will be deemed to be performing substantial services for the employer other than as a chauffeur if a certain portion of each working day is regularly spent performing other services for the employer.

(iii) *Calculation of chauffeur services for personal purposes of the employee.* The fair market value of chauffeur services provided to the employee for personal purposes may be determined by multiplying the fair market value of chauffeur services, as determined pursuant to paragraph (b)(5)(i) (A) or (B) of this section, by a fraction, the numerator of which is equal to the sum of the hours spent by the chauffeur actually providing personal driving services to the employee and the hours spent by the chauffeur in ''personal on-call time,'' and the denominator of which is equal to all hours the chauffeur spends in driving services of any kind paid for by the employer, including all hours that are ''on-call.''

(iv) *Definition of on-call time.* For purposes of this paragraph, the term ''on-call time'' means the total amount of time that the chauffeur is not engaged in the actual performance of driving services, but during which time the chauffeur is available to perform such services. With respect to a round-trip, time spent by a chauffeur waiting for an employee to make a return trip is generally not treated as on-call time; rather such time is treated as part of the round-trip.

(v) *Definition of personal on-call time.* For purposes of this paragraph, the term ''personal on-call time'' means the amount of time outside the employee's normal working hours for the employer when the chauffeur is available to the employee to perform driving services.

(vi) *Presumptions.* (A) An employee's normal working hours will be presumed to consist of a ten hour period during which the employee usually conducts business activities for that employer.

(B) It will be presumed that if the chauffeur is on-call to provide driving services to an employee during the employee's normal working hours, then that on-call time will be performed for business purposes.

(C) Similarly, if the chauffeur is on-call to perform driving services to an employee after normal working hours, then that on-call time will be presumed to be ''personal on-call time.''

(D) The presumptions set out in paragraph (b)(5)(vi) (A), (B), and (C) of this section may be rebutted. For example, an employee may demonstrate by adequate substantiation that his or her normal working hours consist of more than ten hours. Furthermore, if the employee keeps adequate records and is able to substantiate that some portion of the driving services performed by the chauffeur after normal working hours is attributable to business purposes, then personal on-call time may be reduced by an amount equal to such personal on-call time multiplied by a fraction, the numerator of which is equal to the time spent by the chauffeur after normal working hours driving the employee for business purposes, and the denominator of which is equal to the total time spent by the chauffeur driving the employee after normal working hours for all purposes.

(vii) *Examples.* The rules of this paragraph (b)(5) may be illustrated by the following examples:

*Example 1.* An employer makes available to employee A an automobile and a full-time chauffeur B (who performs no other services for A's employer) for an entire calendar year. Assume that the automobile lease valuation rule of paragraph (d) of this section is used and that the Annual Lease Value of the automobile is $9,250. Assume further that B's compensation for the year is $12,000 (as defined in section 414(q)(7)) and that B is furnished lodging with a value of $3,000 that is excludable from B's gross income. The maximum amount subject to inclusion in A's gross income for use of the automobile and chauffeur is therefore $24,250 ($12,000+$3,000+$9,250). If 70 percent of the miles placed on the automobile during the year are for A's employer's business, then $6,475 is excludable from A's gross income with respect to the automobile as a working condition fringe ($9,250×.70). Thus, $2,775 is includible in A's gross income with respect to the automobile ($9,250−$6,475). With respect to the chauffeur, if 20 percent of the chauffeur's time is spent actually driving A or being on-call to drive A for personal purposes; then $3,000 is includible in A's income (.20×$15,000). Eighty percent of $15,000, or $12,000, is excluded from A's income as a working condition fringe.

*Example 2.* Assume the same facts as in example (1) except that in addition to providing chauffeur services, B is responsible for performing substantial non-chauffeur-related duties (such as clerical or secretarial functions) during which time B is not ''on-call'' as a chauffeur. If B spends only 75 percent of the time performing chauffeur services, then the maximum amount subject to inclusion in A's gross income for use of the automobile and chauffeur is $20,500 (($15,000×.75)+$9,250). If B is actually driving A for personal purposes or is on-call to drive A for personal purposes for 20 percent of the time during which B is available to provide chauffeur services, then $2,250 is includible in A's gross income (.20×$11,250). The income inclusion with respect to the automobile is the same as in example (1).

*Example 3.* Assume the same facts as in example (2) except that while B is performing non-chauffeur-related duties, B is on call as A's chauffeur. No part of B's compensation is excluded when determining the value of the benefit provided to A. Thus, as in example (1), $3,000 is includible in A's gross income with respect to the chauffeur.

(6) *Fair market value of a flight on an employer-provided piloted aircraft*—(i) *In general.* If the non-commercial flight special valuation rule of paragraph (g) of this section does not apply, the value of a flight on an employer-provided piloted aircraft is determined under the general valuation principles set forth in this paragraph.

(ii) *Value of flight.* If an employee takes a flight on an employer-provided piloted aircraft and that employee's flight is primarily personal (see § 1.162–2(b)(2)), the value of the flight is equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable piloted aircraft for that period for the same or a comparable flight. A flight taken under these circumstances may not be valued by reference to the cost of commercial airfare for the same or a comparable flight. The cost to charter the aircraft must be allocated among all employees on board the aircraft based on all the facts and circumstances unless one or more of the employees controlled the use of the aircraft. Where one or more employees control the use of the aircraft, the value of the flight shall be allocated solely among such controlling employees, unless a written agreement among all the employees on the flight otherwise allocates the value of such flight. Notwithstanding the allocation required by the preceding sentence, no additional amount shall be included in the income of any employee whose flight is properly valued under the special valuation rule of paragraph (g) of this section. For purposes of this paragraph (b)(6), ''control'' means the ability of the employee to determine the route, departure time and destination of the flight. The rules provided in paragraph (g)(3) of this section will be used for purposes of this section in defining a flight. Notwithstanding the allocation required by the preceding sentence, no additional amount shall be included in the income of an employee for that portion of any such flight which is excludible from income pursuant to section 132(d) or §1.132–5 as a working condition fringe.

(iii) *Examples.* The rules of paragraph (b)(6) of this section may be illustrated by the following examples:

*Example 1.* An employer makes available to employees A and B a piloted aircraft in New York, New York. A wants to go to Los Angeles, California for personal purposes. B needs to go to Chicago, Illinois for business purposes, and then wants to go to Los Angeles, California for personal purposes. Therefore, the aircraft first flies to Chicago, and B deplanes and then boards the plane again. The aircraft then flies to Los Angeles, California where A and B deplane. The value of the flight to employee A will be no more than the amount that an individual would have to pay in an arm's length transaction to charter the same or a comparable piloted aircraft for the same or comparable flight from New York City to Los Angeles. No amount will be imputed to employee A for the stop at Chicago. As to employee B, the value of the personal flight will be no more than the value or the flight from Chicago to Los Angeles. Pursuant to the rules set forth in §1.132–5(k), the flight from New York to Chicago will not be included in employee B's income since that flight was taken solely for business purposes. The charter cost must be allocated between A and B, since both employees controlled portions of the flight. Assume that the employer allocates according to the relative value of each employee's flight. If the charter value of A's flight from New York City to Los Angeles is $1,000 and the value of B's flight from Chicago to Los Angeles is $600 and the value of the actual flight from New York to Chicago to Los Angeles is $1,200, then the amount to be allocated to employee A is $750 ($1,000/($1,000+$600)×$1,200) and the amount to be allocated to employee B is $450 ($600/($1000+$600)×$1,200).

*Example 2.* Assume the same facts as in example (1), except that employee A also deplanes at Chicago, Illinois, but for personal purposes. The value of the flight to employee A then becomes the value of a flight from New York to Chicago to Los Angeles, *i.e.*, $1,200. Therefore, the amount to be allocated to employee A is $800 ($1,200/($1,200+$600)×$1,200) and the amount to be allocated to employee B is $400 ($600/($1,200+$600)× $1,200).

(7) *Fair market value of the use of an employer-provided aircraft for which the employer does not furnish a pilot*—(i) *In general.* If the non-commercial flight special valuation rule of paragraph (g) of this section does not apply and if an employer provides an employee with the use of an aircraft without a pilot, the value of the use of the employer-provided aircraft is determined under the general valuation principles set forth in this paragraph (b)(7).

(ii) *Value of flight.* In general, if an employee takes a flight on an employer-provided aircraft for which the employer does not furnish a pilot, the value of that flight is equal to the amount that an individual would have to pay in an arm's-length transaction to lease the same or comparable aircraft on the same or comparable terms for the same period in the geographic area in which the aircraft is used. For example, if an employer makes its aircraft available to an employee who will pilot the aircraft for a two-hour flight, the value of the use of the aircraft is the amount that an individual would have to pay in an arm's-length transaction to rent a comparable aircraft for that period in the geographic area in which the aircraft is used. As another example, assume that an employee uses an employer-provided aircraft to commute between home and work. The value of the use of the aircraft is the amount that an individual would have to pay in an arm's-length transaction to rent a comparable aircraft for commuting in the geographic area in which the aircraft is used. If the availability of the flight is of benefit to more than one employee, then such value shall be allocated among such employees on the basis of the relevant facts and circumstances.

(c) *Special valuation rules*—(1) *In general.* Paragraphs (d) through (k) of this section provide special valuation rules that may be used under certain circumstances for certain commonly provided fringe benefits. For general rules relating to the valuation of fringe benefits not eligible for valuation under the special valuation rules or fringe benefits with respect to which the special valuation rules are not used, see paragraph (b) of this section.

(2) *Use of the special valuation rules*—(i) *For benefits provided before January 1, 1993.* The special valuation rules may be used for income tax, employment tax, and reporting purposes. The employer has the option to use any of the special valuation rules. However, an employee may only use a special valuation rule if the employer uses the rule. Moreover, an employee may only use the special rule that the employer uses to value the benefit provided; the employee may not use another special rule to value that benefit. The employee may always use general valuation rules based on facts and circumstances (see paragraph (b) of this section) even if the employer uses a special rule. If a special rule is used, it must be used for all purposes. If an employer properly uses a special rule and the employee uses the special rule, the employee must include in gross income the amount determined by the employer under the special rule reduced by the sum of—

(A) Any amount reimbursed by the employee to the employer, and

(B) Any amount excludable from income under another section of subtitle A of the Internal Revenue Code of 1986. If an employer properly uses a special rule and properly determines the amount of an employee's working condition fringe under section 132 and §1.132–5 (under the general rule or under a special rule), and the employee uses the special valuation rule, the employee must include in gross income the amount determined by the employer less any amount reimbursed by the employee to the employer. The employer and employee may use the special rules to determine the amount of the reimbursement due the employer by the employee. Thus, if an employee reimburses an employer for the value of a benefit as determined under a special valuation rule, no amount is includable in the employee's gross income with respect to the benefit. The provisions of this paragraph are effective for benefits provided before January 1, 1993.

(ii) *For benefits provided after December 31, 1992.* The special valuation rules may be used for income tax, employment tax, and reporting purposes. The employer has the option to use any of the special valuation rules. An employee may use a special valuation rule only if the employer uses that rule or the employer does not meet the condition of paragraph (c)(3)(ii)(A) of this section, but one of the other conditions of paragraph (c)(3)(ii) of this section is met. The employee may always use general valuation rules based on facts and circumstances (see paragraph (b) of this section) even if the employer uses a special rule. If a special rule is used, it must be used for all purposes. If an employer properly uses a special rule and the employee uses the special rule, the employee must include in gross income the amount determined by the employer under the special rule reduced by the sum of—

(A) Any amount reimbursed by the employee to the employer; and

(B) Any amount excludable from income under another section of subtitle A of the Internal Revenue Code of 1986. If an employer properly uses a special rule and properly determines the amount of an employee's working condition fringe under section 132 and §1.132–5 (under the general rule or under a special rule), and the employee uses the special valuation rule, the employee must include in gross income the amount determined by the employer less any amount reimbursed by the employee to the employer. The employer and employee may use the special rules to determine the amount of the reimbursement due the employer by the employee. Thus, if an employee reimburses an employer for the value of a benefit as determined under a special valuation rule, no amount is includible in the employee's gross income with respect to the benefit. The provisions of this paragraph are effective for benefits provided after December 31, 1992.

(iii) *Vehicle special valuation rules*—(A) *Vehicle by vehicle basis*. Except as provided in paragraphs (d)(7)(v) and (e)(5)(v) of this section, the vehicle special valuation rules of paragraphs (d), (e), and (f) of this section apply on a vehicle by vehicle basis. An employer need not use the same vehicle special valuation rule for all vehicles provided to all employees. For example, an employer may use the automobile lease valuation rule for automobiles provided to some employees, and the commuting and vehicle cents-per-mile valuation rules for automobiles provided to other employees. For purposes of valuing the use or availability of a vehicle, the consistency rules provided in paragraphs (d)(7) and (e)(5) of this section (relating to the automobile lease valuation rule and the vehicle cents-per-mile valuation rule, respectively) apply.

(B) *Shared vehicle usage*. If an employer provides a vehicle to employees for use by more than one employee at the same time, such as with an employer-sponsored vehicle commuting pool, the employer may use any of the special valuation rules that may be applicable to value the use of the vehicle by the employees. The employer must use the same special valuation rule to value the use of the vehicle by each employee who shares such use. The employer must allocate the value of the use of the vehicle based on the relevant facts and circumstances among the employees who share use of the vehicle. For example, assume that an employer provides an automobile to four of its employees and that the employees use the automobile in an employer-sponsored vehicle commuting pool. Assume further that the employer uses the automobile lease valuation rule of paragraph (d) of this section and that the Annual Lease Value of the automobile is $5,000. The employer must treat $5,000 as the value of the availability of the automobile to the employees, and must apportion the $5,000 value among the employees who share the use of the automobile based on the relevant facts and circumstances. Each employee's share of the value of the availability of the automobile is then to be reduced by the amount, if any, of each employee's working condition fringe exclusion and the amount reimbursed by the employee to the employer.

(iv) *Commercial and noncommercial flight valuation rules*. Except as otherwise provided, if either the commercial flight valuation rule or the non-commercial flight valuation rule is used, that rule must be used by an employer to value all eligible flights taken by all employees in a calendar year. See paragraph (g)(14) of this section for the applicable consistency rules.

(3) *Additional rules for using special valuation*—(i) *Election to use special valuation rules for benefits provided before January 1, 1993*. A particular special valuation rule is deemed to have been elected by the employer (and, if applicable, by the employee), if the employer (and, if applicable, the employee) determines the value of the fringe benefit provided by applying the special valuation rule and treats that value as the fair market value of the fringe benefit for income, employment tax, and reporting purposes. Neither the employer nor the employee must notify the Internal Revenue Service of the election. The provisions of this paragraph are effective for benefits provided before January 1, 1993.

(ii) *Conditions on the use of special valuation rules for benefits provided after December 31, 1992*. Neither the employer nor the employee may use a special valuation rule to value a benefit provided after December 31, 1992, unless one of the following conditions is satisfied—

(A) The employer treats the value of the benefit as wages for reporting purposes within the time for filing the returns for the taxable year (including extensions) in which the benefit is provided;

(B) The employee includes the value of the benefit in income within the time for filing the returns for the taxable year (including extensions) in which the benefit is provided;

(C) The employee is not a control employee as defined in paragraphs (f)(5) and (f)(6) of this section; or

(D) The employer demonstrates a good faith effort to treat the benefit correctly for reporting purposes.

(4) *Application of section 414 to employers.* For purposes of paragraphs (c) through (k) of this section, except as otherwise provided therein, the term ''employer'' includes all entities required to be treated as a single employer under section 414 (b), (c), (m), or (o).

(5) *Valuation formulae contained in the special valuation rules.* The valuation formula contained in the special valuation rules are provided only for use in connection with those rules. Thus, when a special valuation rule is properly applied to a fringe benefit, the Commissioner will accept the value calculated pursuant to the rule as the fair market value of that fringe benefit. However, when a special valuation rule is not properly applied to a fringe benefit (see, for example, paragraph (g)(13) of this section), or when a special valuation rule is used to value a fringe benefit by a taxpayer not entitled to use the rule, the fair market value of that fringe benefit may not be determined by reference to any value calculated under any special valuation rule. Under the circumstances described in the preceding sentence, the fair market value of the fringe benefit must be determined pursuant to the general valuation rules of paragraph (b) of this section.

(6) *Modification of the special valuation rules.* The Commissioner may, to the extent necessary for tax administration, add, delete, or modify any special valuation rule, including the valuation formulae contained herein, on a prospective basis by regulation, revenue ruling or revenue procedure.

(7) *Special accounting rule.* If the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (see § 601.601(d)(2)(ii)(*b*) of this chapter) (relating to the reporting of and withholding on the value of noncash fringe benefits), benefits which are deemed provided in a subsequent calendar year pursuant to that rule are considered as provided in that subsequent calendar year for purposes of the special valuation rules. Thus, if a particular special valuation rule is in effect for a calendar year, it applies to benefits deemed provided during that calendar year under the special accounting rule.

(d) *Automobile lease valuation rule*—(1) *In general*—(i) *Annual Lease Value.* Under the special valuation rule of this paragraph (d), if an employer provides an employee with an automobile that is available to the employee for an entire calendar year, the value of the benefit provided is the Annual Lease Value (determined under paragraph (d)(2) of this section) of that automobile. Except as otherwise provided, for an automobile that is available to an employee for less than an entire calendar year, the value of the benefit provided is either a pro-rated Annual Lease Value or the Daily Lease Value (both as defined in paragraph (d)(4) of this section), whichever is applicable. Absent any statutory exclusion relating to the employer-provided automobile (see, for example, section 132(a)(3) and § 1.132–5(b)), the amount of the Annual Lease Value (or a pro-rated Annual Lease Value or the Daily Lease Value, as applicable) is included in the gross income of the employee.

(ii) *Definition of automobile.* For purposes of this paragraph (d), the term ''automobile'' means any four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways.

(2) *Calculation of Annual Lease Value*—(i) *In general.* The Annual Lease Value of a particular automobile is calculated as follows:

(A) Determine the fair market value of the automobile as of the first date on which the automobile is made available to any employee of the employer for personal use. For an automobile first made available to any employee for personal use prior to January 1, 1985, determine the fair market value as of January 1 of the first year the special valuation rule of this paragraph (d) is used with respect to the automobile. For rules relating to determination of the fair market value of an automobile for purposes of this paragraph (d), see paragraph (d)(5) of this section.

(B) Select the dollar range in column 1 of the Annual Lease Value Table, set forth in paragraph (d)(2)(iii) of this section corresponding to the fair market value of the automobile. Except as otherwise provided in paragraphs (d)(2) (iv) and (v) of this section, the Annual Lease Value for each year of availability of the automobile is the corresponding amount in column 2 of the Table.

(ii) *Calculation of Annual Lease Value of automobile owned or leased by both an employer and an employee*—(A) *Purchased automobiles.* Notwithstanding anything in this section to the contrary, if an employee contributes an amount toward the purchase price of an automobile in return for a percentage ownership interest in the automobile, the Annual Lease Value or the Daily Lease Value, whichever is applicable, is determined by reducing the fair market value of the employer-provided automobile by the lesser of—

(*1*) The amount contributed, or

(*2*) An amount equal to the employee's percentage ownership interest multiplied by the unreduced fair market value of the automobile.

If the automobile is subsequently revalued, the revalued amount (determined without regard to this paragraph (d)(2)(ii)(A)) is reduced by an amount which is equal to the employee's percentage ownership interest in the vehicle). If the employee does not receive an ownership interest in the employer-provided automobile, then the Annual Lease Value or the Daily Lease Value, whichever is applicable, is determined without regard to any amount contributed. For purposes of this paragraph (d)(2)(ii)(A), an employee's ownership interest in an automobile will not be recognized unless it is reflected in the title of the automobile. An ownership interest reflected in the title of an automobile will not be recognized if under the facts and circumstances the title does not reflect the benefits and burdens of ownership.

(B) *Leased automobiles.* Notwithstanding anything in this section to the contrary, if an employee contributes an amount toward the cost to lease an automobile in return for a percentage interest in the automobile lease, the Annual Lease Value or the Daily Lease Value, whichever is applicable, is determined by reducing the fair market value of the employer-provided automobile by the amount specified in the following sentence. The amount specified in this sentence is the unreduced fair market value of a vehicle multiplied by the lesser of—

(*1*) The employee's percentage interest in the lease, or

(*2*) A fraction, the numerator of which is the amount contributed and the denominator of which is the entire lease cost.

If the automobile is subsequently revalued, the revalued amount (determined without regard to this paragraph (d)(2)(ii)(B)) is reduced by an amount which is equal to the employee's percentage interest in the lease) multiplied by the revalued amount. If the employee does not receive an interest in the automobile lease, then the Annual Lease Value or the Daily Lease Value, whichever is applicable, is determined without regard to any amount contributed. For purposes of this paragraph (d)(2)(ii)(B), an employee's interest in an automobile lease will not be recognized unless the employee is a named co-lessee on the lease. An interest in a lease will not be recognized if under the facts and circumstances the lease does not reflect the true obligations of the lessees.

(C) *Example.* The rules of paragraph (d)(2)(ii) (A) and (B) of this section are illustrated by the following example:

*Example.* Assume that an employer pays $15,000 and an employee pays $5,000 toward the purchase of an automobile. Assume further that the employee receives a 25 percent interest in the automobile and is named as a co-owner on the title to the automobile. Under the rule of paragraph (d)(2)(ii)(A) of this section, the Annual Lease Value of the automobile is determined by reducing the fair market value of the automobile ($20,000) by the $5,000 employee contribution. Thus, the Annual Lease Value of the automobile under the table in paragraph (d)(2)(iii) of this section is $4,350. If the employee in this example does not receive an ownership interest in the automobile and is provided the use of the automobile for two years, the Annual Lease Value would be determined without regard to the $5,000 employee contribution. Thus, the Annual Lease Value would be

$5,600. The $5,000 employee contribution would reduce the amount includible in the employee's income after taking into account the amount, if any, excluded from income under another provision of subtitle A of the Internal Revenue Code, such as the working condition fringe exclusion. Thus, if the employee places 50 percent of the mileage on the automobile for the employer's business each year, then the amount includible in the employee's income in the first year would be ($5,600–2,800–2,800), or $0, the amount includible in the employee's income in the second year would be ($5,600–2,800–2,200 ($5,000–2,800)) or $600 and the amount includible in the third year would be ($5,600–2,800) or $2,800 since the employee's contribution has been completely used in the first two years.

(iii) *Annual Lease Value Table.*

| Automobile fair market value (1) | Annual lease value (2) |
|---|---|
| $0 to 999 | $600 |
| 1,000 to 1,999 | 850 |
| 2,000 to 2,999 | 1,100 |
| 3,000 to 3,999 | 1,350 |
| 4,000 to 4,999 | 1,600 |
| 5,000 to 5,999 | 1,850 |
| 6,000 to 6,999 | 2,100 |
| 7,000 to 7,999 | 2,350 |
| 8,000 to 8,999 | 2,600 |
| 9,000 to 9,999 | 2,850 |
| 10,000 to 10,999 | 3,100 |
| 11,000 to 11,999 | 3,350 |
| 12,000 to 12,999 | 3,600 |
| 13,000 to 13,999 | 3,850 |
| 14,000 to 14,999 | 4,100 |
| 15,000 to 15,999 | 4,350 |
| 16,000 to 16,999 | 4,600 |
| 17,000 to 17,999 | 4,850 |
| 18,000 to 18,999 | 5,100 |
| 19,000 to 19,999 | 5,350 |
| 20,000 to 20,999 | 5,600 |
| 21,000 to 21,999 | 5,850 |
| 22,000 to 22,999 | 6,100 |
| 23,000 to 23,999 | 6,350 |
| 24,000 to 24,999 | 6,600 |
| 25,000 to 25,999 | 6,850 |
| 26,000 to 27,999 | 7,250 |
| 28,000 to 29,999 | 7,750 |
| 30,000 to 31,999 | 8,250 |
| 32,000 to 33,999 | 8,750 |
| 34,000 to 35,999 | 9,250 |
| 36,000 to 37,999 | 9,750 |
| 38,000 to 39,999 | 10,250 |
| 40,000 to 41,999 | 10,750 |
| 42,000 to 43,999 | 11,250 |
| 44,000 to 45,999 | 11,750 |
| 46,000 to 47,999 | 12,250 |
| 48,000 to 49,999 | 12,750 |
| 50,000 to 51,999 | 13,250 |
| 52,000 to 53,999 | 13,750 |
| 54,000 to 55,999 | 14,250 |
| 56,000 to 57,999 | 14,750 |
| 58,000 to 59,999 | 15,250 |

For vehicles having a fair market value in excess of $59,999, the Annual Lease Value is equal to: (.25 × the fair market value of the automobile) + $500.

(iv) *Recalculation of Annual Lease Value.* The Annual Lease Values determined under the rules of this paragraph (d) are based on four-year lease terms. Therefore, except as otherwise provided in paragraph (d)(2)(v) of this section, the Annual Lease Value calculated by applying paragraph (d)(2) (i) or (ii) of this section shall remain in effect for the period that begins with the first date the special valuation rule of paragraph (d) of this section is applied by the employer to the automobile and ends on December 31 of the fourth full calendar year following that date. The Annual Lease Value for each subsequent four-year period is calculated by determining the fair market value of the automobile as of the first January 1 following the period described in the previous sentence and selecting the amount in column 2 of the Annual Lease Value Table corresponding to the appropriate dollar range in column 1 of the Table. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may calculate the Annual Lease Value for each subsequent four-year period as of the beginning of the special accounting period that begins immediately prior to the January 1 described in the previous sentence. For example, assume that pursuant to Announcement 85–113, an employer uses the special accounting rule. Assume further that beginning on November 1, 1988, the special accounting period is November 1 to October 31 and that the employer elects to use the special valuation rule of this paragraph (d) as of January 1, 1989. The employer may recalculate the Annual Lease Value as of November 1, 1992, rather than as of January 1, 1993.

(v) *Transfer of the automobile to another employee.* Unless the primary purpose of the transfer is to reduce Federal taxes, if an employer transfers the use of an automobile from one employee to another employee, the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of January

1 of the calendar year of transfer. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of the beginning of the special accounting period in which the transfer occurs. If the employer does not recalculate the Annual Lease Value, and the employee to whom the automobile is transferred uses the special valuation rule, the employee may not recalculate the Annual Lease Value.

(3) *Services included in, or excluded from, the Annual Lease Value Table*—(i) *Maintenance and insurance included.* The Annual Lease Values contained in the Annual Lease Value Table include the fair market value of maintenance of, and insurance for, the automobile. Neither an employer nor an employee may reduce the Annual Lease Value by the fair market value of any service included in the Annual Lease Value that is not provided by the employer, such as reducing the Annual Lease Value by the fair market value of a maintenance service contract or insurance. An employer or employee who wishes to take into account only the services actually provided with respect to an automobile may value the availability of the automobile under the general valuation rules of paragraph (b) of this section.

(ii) *Fuel excluded*—(A) *In general.* The Annual Lease Values do not include the fair market value of fuel provided by the employer, whether fuel is provided in kind or its cost is reimbursed by or charged to the employer. Thus, if an employer provides fuel, the fuel must be valued separately for inclusion in income.

(B) *Valuation of fuel provided in kind.* The provision of fuel in kind may be valued at fair market value based on all the facts and circumstances or, in the alternative, it may be valued at 5.5 cents per mile for all miles driven by the employee. However, the provision of fuel in kind may not be valued at 5.5 cents per mile for miles driven outside the United States, Canada or Mexico. For purposes of this section, the United States includes the United States, its possessions and its territories.

(C) *Valuation of fuel where cost reimbursed by or charged to an employer.* The fair market value of fuel, the cost of which is reimbursed by or charged to an employer, is generally the amount of the actual reimbursement or the amount charged, provided the purchase of the fuel is at arm's-length.

(D) *Fleet-average cents-per-mile fuel cost.* If an employer with a fleet of at least 20 automobiles that meets the requirements of paragraph (d)(5)(v)(D) of this section reimburses employees for the cost of fuel or allows employees to charge the employer for the cost of fuel, the fair market value of fuel provided to those automobiles may be determined by reference to the employer's fleet-average cents-per-mile fuel cost. The fleet-average cents-per-mile fuel cost is equal to the fleet-average per-gallon fuel cost divided by the fleet-average miles-per-gallon rate. The averages described in the preceding sentence must be determined by averaging the per-gallon fuel costs and miles-per-gallon rates of a representative sample of the automobiles in the fleet equal to the greater of ten percent of the automobiles in the fleet or 20 automobiles for a representative period, such as a two-month period. In lieu of determining the fleet-average cents-per-mile fuel cost, if an employer is using the fleet-average valuation rule of paragraph (d)(5)(v) of this section and if determining the amount of the actual reimbursement or the amount charged for the purchase of fuel would impose unreasonable administrative burdens on the employer, the provision of fuel may be valued under the rule provided in paragraph (d)(3)(ii)(B) of this section.

(iii) *Treatment of other services.* The fair market value of any service not specifically identified in paragraph (d)(3)(i) of this section that is provided by the employer with respect to an automobile (other than the services of a chauffeur) must be added to the Annual Lease Value of the automobile in determining the fair market value of the benefit provided. See paragraph (b)(5) of this section for rules relating to the valuation of chauffeur services.

(4) *Availability of an automobile for less than an entire calendar year*—(i) *Pro-rated Annual Lease Value used for continuous availability of at least 30 days*—(A) *In general.* Except as otherwise provided in paragraph (d)(4)(iv) of this section, for periods of continuous availability of at least 30 days, but less than an entire calendar year, the value of the availability of an automobile provided by an employer electing to use the automobile lease valuation rule of this paragraph (d) is the pro-rated Annual Lease Value. The pro-rated Annual Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is the number of days of availability and the denominator of which is 365.

(B) *Special rule for continuous availability of at least 30 days that straddles two reporting years.* If an employee is provided with the continuous availability of an automobile for at least 30 days, but the continuous period straddles two calendar years (or two special accounting periods if the special accounting rule of Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (relating to the reporting of and withholding on noncash fringe benefits) is used), the pro-rated Annual Lease Value, rather than the Daily Lease Value, may be applied with respect to such period of continuous availability.

(ii) *Daily Lease Value used for continuous availability of less than 30 days.* Except as otherwise provided in paragraph (d)(4)(iii) of this section, for periods of continuous availability of one or more but less than 30 days, the value of the availability of the employer-provided automobile is the Daily Lease Value. The Daily Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is four times the number of days of availability and the denominator of which is 365.

(iii) *Election to treat all periods as periods of at least 30 days.* The value of the availability of an employer-provided automobile for a period of continuous availability of less than 30 days may be determined by applying the pro-rated Annual Lease Value by treating the automobile as if it had been available for 30 days, if doing so would result in a lower valuation than applying the Daily Lease Value to the shorter period of actual availability.

(iv) *Periods of unavailability*—(A) *General rule.* In general, a pro-rated Annual Lease Value (as provided in paragraph (d)(4)(i) of this section) is used to value the availability of an employer-provided automobile when the automobile is available to an employee for a continuous period of at least 30 days but less than the entire calendar year. Neither an employer nor an employee, however, may use a pro-rated Annual Lease Value when the reduction of Federal taxes is the primary reason the automobile is unavailable to an employee at certain times during the calendar year.

(B) *Unavailability for personal reasons of the employee.* If an automobile is unavailable to an employee because of personal reasons of the employee, such as while the employee is on vacation, a pro-rated Annual Lease Value, if used, must not take into account such periods of unavailability. For example, assume that an automobile is available to an employee during the first five months of the year and during the last five months of the year. Assume further that the period of unavailability occurs because the employee is on vacation. The Annual Lease Value, if it is applied, must be applied with respect to the entire 12-month period. The Annual Lease Value may not be pro-rated to take into account the two-month period of unavailability.

(5) *Fair market value*—(i) *In general.* For purposes of determining the Annual Lease Value of an automobile under the Annual Lease Value Table, the fair market value of an automobile is the amount that an individual would have to pay in an arm's-length transaction to purchase the particular automobile in the jurisdiction in which the vehicle is purchased or leased. That amount includes all amounts attributable to the purchase of an automobile such as sales tax and title fees as well as the purchase price of the automobile. Any special relationship that may exist between the employee and the employer must be disregarded. Also, the employee's subjective perception of the value of the automobile is not relevant to the determination of

the automobile's fair market value, and, except as provided in paragraph (d)(5)(ii) of this section, the cost incurred by the employer in connection with the purchase or lease of the automobile is not determinative of the fair market value of the automobile.

(ii) *Safe-harbor valuation rule*—(A) *General rule*. For purposes of calculating the Annual Lease Value of an automobile under this paragraph (d), the safe-harbor value of the automobile may be used as the fair market value of the automobile.

(B) *Automobiles owned by the employer*. For an automobile owned by the employer, the safe-harbor value of the automobile is the employer's cost of purchasing the automobile (including sales tax, title, and other expenses attributable to such purchase), provided the purchase is made at arm's-length. Notwithstanding the preceding sentence, the safe-harbor value of this paragraph (d)(5)(ii)(B) is not available with respect to an automobile manufactured by the employer. Thus, for example, if one entity manufactures an automobile and sells it to an entity with which it is aggregated pursuant to paragraph (c)(4) of this section, this paragraph (d)(5)(ii)(B) does not apply to value the automobile by the aggregated employer. In this case, value must be determined under paragraph (d)(5)(i) of this section.

(C) *Automobiles leased by the employer*. For an automobile leased but not manufactured by the employer, the safe-harbor value of the automobile is either the manufacturer's suggested retail price of the automobile less eight percent (including sales tax, title, and other expenses attributable to such purchase), or the value determined under paragraph (d)(5)(iii) of this section.

(iii) *Use of nationally recognized pricing sources*. The fair market value of an automobile that is—

(A) Provided to an employee prior to January 1, 1985,

(B) Being revalued pursuant to paragraph (d)(2) (iv) or (v) of this section, or

(C) A leased automobile being valued pursuant to paragraph (d)(5)(ii) of this section, may be determined by reference to the retail value of such automobile as reported by a nationally recognized pricing source that regularly reports new or used automobile retail values, whichever is applicable. That retail value must be reasonable with respect to the automobile being valued. Pricing sources consist of publications and electronic data bases.

(iv) *Fair market value of special equipment*. When determining the fair market value of an automobile, the employer may exclude the fair market value of any specialized equipment or telephone that is added to or carried in the automobile provided that the presence of that equipment or telephone is necessitated by, and attributable to, the business needs of the employer. The value of the specialized equipment must be included if the employee to whom the automobile is available uses the specialized equipment in a trade or business of the employee other than the employee's trade or business of being an employee of the employer.

(v) *Fleet-average valuation rule*—(A) *In general*. An employer with a fleet of 20 or more automobiles meeting the requirements of this paragraph (d)(5)(v) (including the business-use and fair market value conditions of paragraph (d)(5)(v)(D) of this section) may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the fleet. The fleet-average value is the average of the fair market values of all automobiles in the fleet. The fair market value of each automobile in the fleet shall be determined, pursuant to the rules of paragraphs (d)(5) (i) through (iv) of this section, as of the date described in paragraph (d)(2)(i)(A) of this section.

(B) *Period for use of rule*. The fleet-average valuation rule of this paragraph (d)(5)(v) may be used by an employer as of January 1 of any calendar year following the calendar year in which the employer acquires a sufficient number of automobiles to total a fleet of 20 or more automobiles. The Annual Lease Value calculated for the automobiles in the fleet, based on the fleet-average value, shall remain in effect for the period that begins with the first January 1 the fleet-average valuation rule of this paragraph (d)(5)(v) is applied by the employer to the automobiles in the fleet and ends on December 31 of the subsequent calendar year. The Annual

Lease Value for each subsequent two-year period is calculated by determining the fleet-average value of the automobiles in the fleet as of the first January 1 of such period. An employer may cease using the fleet-average valuation rule as of any January 1. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B. 31, August 5, 1985) (relating to the reporting of and withholding on noncash fringe benefits), the employer may apply the rules of this paragraph (d)(5)(v)(B) on the basis of the special accounting period rather than the calendar year. (This is accomplished by substituting (*1*) the beginning of the special accounting period that begins immediately prior to the January 1 described in this paragraph (d)(5)(v)(B) for January 1 wherever it appears in this paragraph (d)(5)(v) (B) and (*2*) the end of such accounting period for December 31.) If the number of qualifying automobiles in the employer's fleet declines to fewer than 20 for more than 50 percent of the days in a year, then the fleet-average valuation rule does not apply as of January 1 of such year. In this case, the Annual Lease Value must be determined separately for each remaining automobile. The revaluation rules of paragraphs (d)(2) (iv) and (v) of this section do not apply to automobiles valued under this paragraph (d)(5)(v).

(C) *Automobiles included in the fleet.* An employer may include in a fleet any automobile that meets the requirements of this paragraph (d)(5)(v) and is available to any employee of the employer for personal use. An employer may include in the fleet only automobiles the availability of which is valued under the automobile lease valuation rule of this paragraph (d). An employer need not include in the fleet all automobiles valued under the automobile lease valuation rule. An employer may have more than one fleet for purposes of the fleet-average rule of this paragraph (d)(5)(v). For example, an employer may group automobiles in a fleet according to their physical type or use.

(D) *Limitations on use of fleet-average rule.* The rule provided in this paragraph (d)(5)(v) may not be used for any automobile the fair market value of which (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of either the first date on which the automobile is made available to any employee of the employer for personal use or, if later, January 1, 1985) exceeds $16,500. The fair market value limitation of $16,500 shall be adjusted pursuant to section 280F(d)(7) of the Internal Revenue Code of 1986. The first such adjustment shall be for calendar year 1989 (substitute October 1986 for October 1987 in applying the formula). In addition, the rule provided in this paragraph (d)(5)(v) may only be used for automobiles that the employer reasonably expects will regularly be used in the employer's trade or business. For rules concerning when an automobile is regularly used in the employer's business, see paragraph (e)(1)(iv) of this section.

(E) *Additional automobiles added to the fleet.* The fleet-average value in effect at the time an automobile is added to a fleet is treated as the fair market value of the additional automobile for purposes of determining the Annual Lease Value of the automobile until the fleet-average value changes pursuant to paragraph (d)(5)(v)(B) of this section.

(F) *Use of the fleet-average rule by employees.* An employee may only use the fleet-average rule if it is used by the employer. If an employer uses the fleet-average rule, and the employee uses the special valuation rule of paragraph (d) of this section, the employee must use the fleet-average value determined by the employer.

(6) *Special rules for continuous availability of certain automobiles*—(i) *Fleet automobiles.* If an employer is using the fleet-average valuation rule of paragraph (d)(5)(v) of this section and the employer provides an employee with the continuous availability of an automobile from the same fleet during a period (though not necessarily the same fleet automobile for the entire period), the employee is treated as having the use of a single fleet automobile for the entire period, e.g., an entire calendar year. Thus, when applying the automobile lease valuation rule of this paragraph (d), the employer may treat the fleet-average value as the fair market value of the automobile deemed

available to the employee for the period for purposes of calculating the Annual Lease Value, (or pro-rated Annual Lease Value or Daily Lease Value whichever is applicable) of the automobile. If an employer provides an employee with the continuous availability of more than one fleet automobile during a period, the employer may treat the fleet-average value as the fair market value of each automobile provided to the employee provided that the rules of paragraph (d)(5)(v)(D) of this section are satisfied.

(ii) *Demonstration automobiles*—(A) *In general.* If an automobile dealership provides an employee with the continuous availability of a demonstration automobile (as defined in § 1.132–5(o)(3)) during a period (though not necessarily the same demonstration automobile for the entire period), the employee is treated as having the use of a single demonstration automobile for the entire period, e.g., an entire calendar year. If an employer provides an employee with the continuous availability of more than one demonstration automobile during a period, the employer may treat the value determined under paragraph (d)(6)(ii)(B) of this section as the fair market value of each automobile provided to the employee. For rules relating to the treatment as a working condition fringe of the qualified automobile demonstration use of a demonstration automobile by a full-time automobile salesman, see § 1.132–5(o).

(B) *Determining the fair market value of a demonstration automobile.* When applying the automobile lease valuation rule of this paragraph (d), the employer may treat the average of the fair market values of the demonstration automobiles which are available to an employee and held in the dealership's inventory during the calendar year as the fair market value of the demonstration automobile deemed available to the employee for the period for purposes of calculating the Annual Lease Value of the automobile. If under the facts and circumstances it is inappropriate to take into account, with respect to an employee, certain models of demonstration automobiles, the value of the benefit is determined without reference to the fair market values of such models. For example, assume that an employee has the continuous availability for an entire calendar year of one demonstration automobile, although not the same one for the entire year. Assume further that the fair market values of the automobiles in the dealership inventory during the year range from $8,000 to $20,000. If there is not a substantial period (such as three months) during the year when the employee uses demonstration automobiles valued at less than $16,000, then those automobiles are not considered in determining the value of the benefit provided to the employee. In this case, the average of the fair market values of the demonstration automobiles in the dealership's inventory valued at $16,000 or more is treated as the fair market value of the automobile deemed available to the employee for the calendar year for purposes of calculating the Annual Lease Value of the automobile.

(7) *Consistency rules*—(i) *Use of the automobile lease valuation rule by an employer.* Except as provided in paragraph (d)(5)(v)(B) of this section, an employer may adopt the automobile lease valuation rule of this paragraph (d) for an automobile only if the rule is adopted to take effect by the later of—

(A) January 1, 1989, or

(B) The first day on which the automobile is made available to an employee of the employer for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to an employee of the employer for personal use, the first day on which the commuting valuation rule is not used).

(ii) *An employer must use the automobile lease valuation rule for all subsequent years.* Once the automobile lease valuation rule has been adopted for an automobile by an employer, the rule must be used by the employer for all subsequent years in which the employer makes the automobile available to any employee except that the employer may, for any year during which (or for any employee for whom) use of the automobile qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the automobile.

(iii) *Use of the automobile lease valuation rule by an employee.* An employee may adopt the automobile lease valuation rule for an automobile only if the rule is adopted—

(A) By the employer, and

(B) Beginning with the first day on which the automobile for which the employer (consistent with paragraph (d)(7)(i) of this section) adopted the rule is made available to that employee for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to that employee for personal use, the first day on which the commuting valuation rule is not used).

(iv) *An employee must use the automobile lease valuation rule for all subsequent years.* Once the automobile lease valuation rule has been adopted for an automobile by an employee, the rule must be used by the employee for all subsequent years in which the automobile for which the rule is used is available to the employee. However, the employee may, for any year during which use of the automobile qualifies for use of the commuting valuation rule of paragraph (f) of this section and for which the employer uses such rule, use the commuting valuation rule with respect to the automobile.

(v) *Replacement automobiles.* Notwithstanding anything in this paragraph (d)(7) to the contrary, if the automobile lease valuation rule is used by an employer, or by an employer and an employee, with respect to a particular automobile, and a replacement automobile is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement automobile.

(e) *Vehicle cents-per-mile valuation rule*—(1) *In general*—(i) *General rule.* Under the vehicle cents-per-mile valuation rule of this paragraph (e), if an employer provides an employee with the use of a vehicle that—

(A) The employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year (or such shorter period as the vehicle may be owned or leased by the employer), or

(B) Satisfies the requirements of paragraph (e)(1)(ii) of this section, the value of the benefit provided in the calendar year is the standard mileage rate provided in the applicable Revenue Ruling or Revenue Procedure (''cents-per-mile rate'') multiplied by the total number of miles the vehicle is driven by the employee for personal purposes. The cents-per-mile rate is to be applied prospectively from the first day of the taxable year following the date of publication of the applicable Revenue Ruling or Revenue Procedure. An employee who uses an employer-provided vehicle, in whole or in part, for a trade or business other than the employer's trade or business, may take a deduction for such business use based upon the vehicle cents-per-mile rule as long as such deduction is at the same standard mileage rate as that used in calculating the employee's income inclusion. The standard mileage rate must be applied to personal miles independent of business miles. Thus, for example, if the standard mileage rate were 24 cents per mile for the first 15,000 miles and 11 cents per mile for all miles over 15,000 and an employee drives 20,000 personal miles and 45,000 business miles in a year, the value of the personal use of the vehicle is $4,150 ((15,000×$.24)+(5,000×$.11)). For purposes of this section, the use of a vehicle for personal purposes is any use of the vehicle other than use in the employee's trade or business of being an employee of the employer.

(ii) *Mileage rule.* A vehicle satisfies the requirements of this paragraph (e)(1)(ii) for a calendar year if—

(A) It is actually driven at least 10,000 miles in that year; and

(B) Use of the vehicle during the year is primarily by employees. For example, if a vehicle is used by only one employee during the calendar year and that employee drives the vehicle at least 10,000 miles during the year, the vehicle satisfies the requirements of this paragraph (e)(1)(ii) even if all miles driven by the employee are personal. A vehicle is considered used during the year primarily by employees in accordance with the requirement of paragraph (e)(1)(ii)(B) of this section if employees use the vehicle on a consistent basis for commuting. If the employer does not own or lease the vehicle during a portion of the year, the 10,000 mile threshold is to be reduced proportionately to reflect the periods when the employer did not own or lease the vehicle. For purposes of this paragraph (e)(1)(ii), use of the vehicle by an individual (other than the employee) whose use would be taxed to the employee is not considered use by the employee.

(iii) *Limitation on use of the vehicle cents-per-mile valuation rule*—(A) *In general*. Except as otherwise provided in the last sentence of this paragraph (e)(1)(iii)(A), the value of the use of an automobile (as defined in paragraph (d)(1)(ii) of this section) may not be determined under the vehicle cents-per-mile valuation rule of this paragraph (e) for a calendar year if the fair market value of the automobile (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of the later of January 1, 1985, or the first date on which the automobile is made available to any employee of the employer for personal use) exceeds the sum of the maximum recovery deductions allowable under section 280F(a)(2) for a five-year period for an automobile first placed in service during that calendar year (whether or not the automobile is actually placed in service during that year) as adjusted by section 280F(d)(7). With respect to a vehicle placed in service prior to January 1, 1989, the limitation on value will be not less than $12,800. With respect to a vehicle placed in service in or after 1989, the limitation on value is $12,800 as adjusted by section 280F(d)(7).

(B) *Application of limitation with respect to a vehicle owned by both an employer and an employee*. If an employee contributes an amount towards the purchase price of a vehicle in return for a percentage ownership interest in the vehicle, for purposes of determining whether the limitation of this paragraph (e)(1)(iii) applies, the fair market value of the vehicle is reduced by the lesser of—

(*1*) The amount contributed, or

(*2*) An amount equal to the employee's percentage ownership interest multiplied by the unreduced fair market value of the vehicle. If the employee does not receive an ownership interest in the employer-provided vehicle, then the fair market value of the vehicle is determined without regard to any amount contributed. For purposes of this paragraph (e)(1)(iii)(B), an employee's ownership interest in a vehicle will not be recognized unless it is reflected in the title of the vehicle. An ownership interest reflected in the title of a vehicle will not be recognized if under the facts and circumstances the title does not reflect the benefits and burdens of ownership.

(C) *Application of limitation with respect to a vehicle leased by both an employer and employee*. If an employee contributes an amount toward the cost to lease a vehicle in return for a percentage interest in the vehicle lease, for purposes of determining whether the limitation of this paragraph (e)(1)(iii) applies, the fair market value of the vehicle is reduced by the amount specified in the following sentence. The amount specified in this sentence is the unreduced fair market value of a vehicle multiplied by the lesser of—

(*1*) The employee's percentage interest in the lease, or

(*2*) A fraction, the numerator of which is the amount contributed and the denominator of which is the entire lease cost. If the employee does not receive an interest in the vehicle lease, then the fair market value is determined without regard to any amount contributed. For purposes of this paragraph (e)(1)(iii)(C), an employee's interest in a vehicle lease will not be recognized unless the employee is a named co-lessee on the lease. An interest in a lease will not be recognized if under the facts and circumstances, the lease does not reflect the true obligations of the lessees.

(iv) *Regular use in an employer's trade or business*. Whether a vehicle is regularly used in an employer's trade or business is determined on the basis of all facts and circumstances. A vehicle is considered regularly used in an employer's trade or business for purposes of paragraph (e)(1)(i)(A) of this section if one of the following safe harbor conditions is satisfied:

(A) At least 50 percent of the vehicle's total annual mileage is for the employer's business; or

(B) The vehicle is generally used each workday to transport at least three employees of the employer to and from work in an employer-sponsored commuting vehicle pool. Infrequent business use of the vehicle, such as for occasional trips to the airport or between the employer's multiple business premises, does not constitute regular use of the vehicle in the employer's trade or business.

(v) *Application of rule to shared usage.* If an employer regularly provides a vehicle to employees for use by more than one employee at the same time, such as with an employer-sponsored vehicle commuting pool, the employer may use the vehicle cents-per-mile valuation rule to value the use of the vehicle by each employee who shares such use. See §1.61–21(c)(2)(ii)(B) for provisions relating to the allocation of the value of an automobile to more than one employee.

(2) *Definition of vehicle.* For purposes of this paragraph (e), the term ''vehicle'' means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term ''vehicle'' includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(3) *Services included in, or excluded from, the cents-per-mile rate*—(i) *Maintenance and insurance included.* The cents-per-mile rate includes the fair market value of maintenance of, and insurance for, the vehicle. The cents-per-mile rate may not be reduced by the fair market value of any service included in the cents-per-mile rate but not provided by the employer. An employer or employee who wishes to take into account only the particular services provided with respect to a vehicle may value the availability of the vehicle under the general valuation rules of paragraph (b) of this section.

(ii) *Fuel provided by the employer*—(A) *Miles driven in the United States, Canada, or Mexico.* With respect to miles driven in the United States, Canada, or Mexico, the cents-per-mile rate includes the fair market value of fuel provided by the employer. If fuel is not provided by the employer, the cents-per-mile rate may be reduced by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. For purposes of this section, the United States includes the United States, its possessions and its territories.

(B) *Miles driven outside the United States, Canada, or Mexico.* With respect to miles driven outside the United States, Canada, or Mexico, the fair market value of fuel provided by the employer is not reflected in the cents-per-mile rate. Accordingly, the cents-per-mile rate may be reduced but by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. If the employer provides the fuel in kind, it must be valued based on all the facts and circumstances. If the employer reimburses the employee for the cost of fuel or allows the employee to charge the employer for the cost of fuel, the fair market value of the fuel is generally the amount of the actual reimbursement or the amount charged, provided the purchase of fuel is at arm's length.

(iii) *Treatment of other services.* The fair market value of any service not specifically identified in paragraph (e)(3)(i) of this section that is provided by the employer with respect to a vehicle is not reflected in the cents-per-mile rate. See paragraph (b)(5) of this section for rules relating to valuation of chauffeur services.

(4) *Valuation of personal use only.* The vehicle cents-per-mile valuation rule of this paragraph (e) may only be used to value the miles driven for personal purposes. Thus, the employer must include an amount in an employee's income with respect to the use of a vehicle that is equal to the product of the number of personal miles driven by the employee and the appropriate cents-per-mile rate. The term ''personal miles'' means all miles for which the employee used the automobile except miles driven in the employee's trade or business of being an employee of the employer. Unless additional services are provided with respect to the vehicle (see paragraph (e)(3)(iii) of this section), the employer may not include in income a greater amount; for example,

the employer may not include in income 100 percent (all business and personal miles) of the value of the use of the vehicle.

(5) *Consistency rules*—(i) *Use of the vehicle cents-per-mile valuation rule by an employer*. An employer must adopt the vehicle cents-per-mile valuation rule of this paragraph (e) for a vehicle to take effect by the later of—

(A) January 1, 1989, or

(B) The first day on which the vehicle is used by an employee of the employer for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the vehicle is first used by an employee of the employer for personal use, the first day on which the commuting valuation rule is not used).

(ii) *An employer must use the vehicle cents-per-mile valuation rule for all subsequent years*. Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the vehicle. If the vehicle fails to qualify for use of the vehicle cents-per-mile valuation rule during a subsequent year, the employer may adopt for such subsequent year and thereafter any other special valuation rule for which the vehicle then qualifies. If the employer elects to use the automobile lease valuation rule of paragraph (d) of this section for a period in which the automobile does not qualify for use of the vehicle cents-per-mile valuation rule, then the employer must comply with the requirements of paragraph (d)(7) of this section. For purposes of paragraph (d)(7) of this section, the first day on which the automobile with respect to which the vehicle cents-per-mile rule had been used fails to qualify for use of the vehicle cents-per-mile valuation rule may be deemed to be the first day on which the automobile is available to an employee of the employer for personal use.

(iii) *Use of the vehicle cents-per-mile valuation rule by an employee*. An employee may adopt the vehicle cents-per-mile valuation rule for a vehicle only if the rule is adopted—

(A) By the employer, and

(B) Beginning with respect to the first day on which the vehicle for which the employer (consistent with paragraph (e)(5)(i) of this section) adopted the rule is available to that employee for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the vehicle is first used by an employee for personal use, the first day on which the commuting valuation rule is not used).

(iv) *An employee must use the vehicle cents-per-mile valuation rule for all subsequent years*. Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employee, the rule must be used by the employee for all subsequent years of personal use of the vehicle by the employee for which the rule is used by the employer. However, see paragraph (f) of this section for rules relating to the use of the commuting valuation rule for a subsequent year.

(v) *Replacement vehicles*. Notwithstanding anything in this paragraph (e)(5) to the contrary, if the vehicle cents-per-mile valuation rule is used by an employer, or by an employer and an employee, with respect to a particular vehicle. and a replacement vehicle is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement vehicle if the replacement vehicle qualifies for use of the rule.

(f) *Commuting valuation rule*—(1) *In general*. Under the commuting valuation rule of this paragraph (f), the value of the commuting use of an employer-provided vehicle may be determined pursuant to paragraph (f)(3) of this section if the following criteria are met by the employer and employees with respect to the vehicle:

(i) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business;

(ii) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle;

(iii) The employer has established a written policy under which neither the employee, nor any individual whose use would be taxable to the employee, may use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home);

(iv) Except for de minimis personal use, the employee does not use the vehicle for any personal purpose other than commuting; and

(v) The employee required to use the vehicle for commuting is not a control employee of the employer (as defined in paragraphs (f) (5) and (6) of this section).

Personal use of a vehicle is all use of the vehicle by an employee that is not used in the employee's trade or business of being an employee of the employer. An employer-provided vehicle that is generally used each workday to transport at least three employees of the employer to and from work in an employer-sponsored commuting vehicle pool is deemed to meet the requirements of paragraphs (f)(1) (i) and (ii) of this section.

(2) *Special rules.* Notwithstanding anything in paragraph (f)(1) of this section to the contrary, the following special rules apply—

(i) *Chauffeur-driven vehicles.* If a vehicle is chauffeur-driven, the commuting valuation rule of this paragraph (f) may not be used to value the commuting use of any person (other than the chauffeur) who rides in the vehicle. (See paragraphs (d) and (e) of this section for other vehicle special valuation rules.) The special rule of this paragraph (f) may be used to value the commuting-only use of the vehicle by the chauffeur if the conditions of paragraph (f)(1) of this section are satisfied. For purposes of this paragraph (f)(2), an individual will not be considered a chauffeur if he or she performs non-driving services for the employer, is not available to perform driving services while performing such other services and whose only driving services consist of driving a vehicle used for commuting by other employees of the employer.

(ii) *Control employee exception.* If the vehicle in which the employee is required to commute is not an automobile as defined in paragraph (d)(1)(ii) of this section, the restriction of paragraph (f)(1)(v) of this section (relating to control employees) does not apply.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (f) are satisfied, the value of the commuting use of an employer-provided vehicle is $1.50 per one-way commute (e.g., from home to work or from work to home). The value provided in this paragraph (f)(3) includes the value of any goods or services directly related to the vehicle (e.g., fuel).

(ii) *Value per employee.* If there is more than one employee who commutes in the vehicle, such as in the case of an employer-sponsored commuting vehicle pool, the amount includible in the income of each employee is $1.50 per one-way commute. Thus, the amount includible for each round-trip commute is $3.00 per employee. See paragraphs (d)(7)(vi) and (e)(5)(vi) of this section for use of the automobile lease valuation and vehicle cents-per-mile valuation special rules for valuing the use or availability of the vehicle in the case of an employer-sponsored vehicle or automobile commuting pool.

(4) *Definition of vehicle.* For purposes of this paragraph (f), the term ''vehicle'' means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term ''vehicle'' includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(5) *Control employee defined—Non-government employer.* For purposes of this paragraph (f), a control employee of a non-government employer is any employee—

(i) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer whose compensation equals or exceeds $50,000,

(ii) Who is a director of the employer,

(iii) Whose compensation equals or exceeds $100,000, or

(iv) Who owns a one-percent or greater equity, capital, or profits interest in the employer.

For purposes of determining who is a one-percent owner under paragraph (f)(5)(iv) of this section, any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) one percent or more of the fair market value of an entity (the ''owned entity'') is considered a one-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), (m), or (o). For purposes of determining who is an officer or director with respect to an employer under this paragraph (f)(5), notwithstanding anything in this section to the contrary, if an entity would be aggregated with other entities under the rules of section 414 (b), (c), (m), or (o), the officer definition (but not the compensation requirement) and the director definition apply to each such separate entity rather tha to the aggregated employer. An employee who is an officer or a director of an entity (the ''first entity'') shall be treated as an officer or a director of all entities aggregated with the first entity under the rules of section 414 (b), (c), (m), or (o). Instead of applying the control employee definition of this paragraph (f)(5), an employer may treat all, and only, employees who are ''highly compensated'' employees (as defined in §1.132–8(g)) as control employees for purposes of this paragraph (f).

(6) *Control employee defined—Government employer.* For purposes of this paragraph (f), a control employee of a government employer is any—

(i) Elected official, or

(ii) Employee whose compensation equals or exceeds the compensation paid to a Federal Government employee holding a position at Executive Level V, determined under Chapter 11 of title 2, United States Code, as adjusted by section 5318 of title 5 United States Code.

For purposes of this paragraph (f), the term ''government'' includes any Federal, state or local governmental unit, and any agency or instrumentality thereof. Instead of applying the control employee definition of paragraph (f)(6), an employer may treat all and only employees who are ''highly compensated'' employees (as defined in §1.132–8(f)) as control employees for purposes of this paragraph (f).

(7) *''Compensation'' defined.* For purposes of this paragraph (f), the term ''compensation'' has the same meaning as in section 414(q)(7). Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c), (m), or (o). Levels of compensation shall be adjusted at the same time and in the same manner as provided in section 415(d). The first such adjustment shall be for calendar year 1988.

(g) *Non-commercial flight valuation rule*—(1) *In general.* Under the non-commercial flight valuation rule of this paragraph (g), except as provided in paragraph (g)(12) of this section, if an employee is provided with a flight on an employer-provided aircraft, the value of the flight is calculated using the aircraft valuation formula of paragraph (g)(5) of this section. For purposes of this paragraph (g), the value of a flight on an employer-provided aircraft by an individual who is less than two years old is deemed to be zero. See paragraph (b)(1) of this section for rules relating to the amount includible in income when an employee reimburses the employee's employer for all or part of the fair market value of the benefit provided.

(2) *Eligible flights and eligible aircraft.* The valuation rule of this paragraph (g) may be used to value flights on all employer-provided aircraft, including helicopters. The valuation rule of this paragraph (g) may be used to value international as well as domestic flights. The valuation rule of this paragraph (g) may not be used to value a flight on any commercial aircraft on which air transportation is sold to the public on a per-seat basis. For a special valuation rule relating to certain flights on commercial aircraft, see paragraph (h) of this section.

(3) *Definition of a flight*—(i) *General rule.* Except as otherwise provided in paragraph (g)(3)(iii) of this section (relating to intermediate stops), for purposes of this paragraph (g), a flight is the distance (in statute miles, *i.e.*, 5,280 feet per statute mile) between the

place at which the individual boards the aircraft and the place at which the individual deplanes.

(ii) *Valuation of each flight.* Under the valuation rule of this paragraph (g), value is determined separately for each flight. Thus, a round-trip is comprised of at least two flights. For example, an employee who takes a personal trip on an employer-provided aircraft from New York City to Denver, then Denver to Los Angeles, and finally Los Angeles to New York City has taken three flights and must apply the aircraft valuation formula separately to each flight. The value of a flight must be determined on a passenger-by-passenger basis. For example, if an individual accompanies an employee and the flight taken by the individual would be taxed to the employee, the employee would be taxed on the special rule value of the flight by the employee and the flight by the individual.

(iii) *Intermediate stop.* If a landing is necessitated by weather conditions, by an emergency, for purposes of refueling or obtaining other services relating to the aircraft or for any other purpose unrelated to the personal purposes of the employee whose flight is being valued, that landing is an intermediate stop. Additional mileage attributable to an intermediate stop is not considered when determining the distance of an employee's flight.

(iv) *Examples.* The rules of paragraph (g)(3)(iii) of this section may be illustrated by the following examples:

*Example 1.* Assume that an employee's trip originates in St. Louis, Missouri, with Seattle, Washington as its destination, but, because of weather conditions, the aircraft lands in Denver, Colorado, and the employee stays in Denver overnight. Assume further that the next day the aircraft flies to Seattle where the employee deplanes. The employee's flight is the distance between the airport in St. Louis and the airport in Seattle.

*Example 2.* Assume that a trip originates in New York, New York, with five passengers and that the aircraft makes a stop in Chicago, Illinois, so that one of the passengers can deplane for a purpose unrelated to the personal purposes of the other passengers whose flights are being valued. The aircraft then goes on to Los Angeles, California, where the other four passengers will deplane. The flight of the passenger who deplaned in Chicago is the distance between the airport in New York and the airport in Chicago. The stop in Chicago is disregarded as an intermediate stop, however, when measuring the flights taken by each of the other four passengers. Their flights would be the distance between the airport in New York and the airport in Los Angeles.

(4) *Personal and non-personal flights*—(i) In *general.* The valuation rule of this paragraph (g) applies to personal flights on employer-provided aircraft. A personal flight is one the value of which is not excludable under another section of subtitle A of the Internal Revenue Code of 1986, such as under section 132(d) (relating to a working condition fringe). However, solely for purposes of paragraphs (g)(4)(ii) and (g)(4)(iii) of this section, references to personal flights do not include flights a portion of which would not be excludable from income by reason of section 274(c).

(ii) *Trip primarily for employer's business.* If an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the employee's trip is primarily for the employer's business (see §1.162–2(b)(2)), the employee must include in income the excess of the value of all the flights that comprise the trip over the value of the flights that would have been taken had there been no personal flights but only business flights. For example, assume that an employee flies on an employer-provided aircraft from Chicago, Illinois, to Miami, Florida, for the employer's business and that from Miami the employee flies on the employer-provided aircraft to Orlando, Florida, for personal purposes and then flies back to Chicago. Assume further that the primary purpose of the trip is for the employer's business. The amount includible in income is the excess of the value of the three flights (Chicago to Miami, Miami to Orlando, and Orlando to Chicago), over the value of the flights that would have been taken had there been no personal flights but only business flights (Chicago to Miami and Miami to Chicago).

(iii) *Primarily personal trip.* If an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the employee's trip is primarily personal (see §1.162–2(b)(2)), the amount includible in the employee's income is the value of the personal flights that would have been taken had there been no business flights but only personal flights. For example, assume that an employee flies on an employer-provided aircraft from San Francisco, California, to Los Angeles, California, for the employer's business and that from Los Angeles the employee flies on an employer-provided aircraft to Palm Springs, California, primarily for personal reasons and then flies back to San Francisco. Assume further that the primary purpose of the trip is personal. The amount includible in the employee's income is the value of personal flights that would have been taken had there been no business flights but only personal flights (San Francisco to Palm Springs and Palm Springs to San Francisco).

(iv) *Application of section 274(c).* The value of employer- provided travel outside the United States away from home may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, to the extent not deductible by reason of section 274(c). The valuation rule of this paragraph (g) applies to that portion of the value any flight not excludable by reason of section 274(c). Such value is includible in income in addition to the amounts determined under paragraphs (g)(4)(ii) and (g)(4)(iii) of this section.

(v) *Flights by individuals who are not personal guests.* If an individual who is not an employee of the employer providing the aircraft is on a flight, and the individual is not the personal guest of any employee of the employer, the flight by the individual is not taxable to any employee of the employer providing the aircraft. The rule in the preceding sentence applies where the individual is provided the flight by the employer for noncompensatory business reasons of the employer. For example, assume that G, an employee of company Y, accompanies A, an employee of company X, on company X's aircraft for the purpose of inspecting land under consideration for purchase by company X from company Y. The flight by G is not taxable to A. No inference may be drawn from this paragraph (g)(4)(v) concerning the taxation of a flight provided to an individual who is neither an employee of the employer nor a personal guest of any employee of the employer.

(5) *Aircraft valuation formula.* Under the valuation rule of this paragraph (g), the value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple (as provided in paragraph (g)(7) of this section) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are revised semi-annually. The base aircraft valuation formula in effect from January 1, 1989 through June 30, 1989, is as follows: a terminal charge of $26.48 plus ($.1449 per mile for the first 500 miles, $.1105 per mile for miles between 501 and 1500, and $.1062 per mile for miles over 1500). For example, if a flight taken on January 15, 1989, by a non-control employee on an employer-provided aircraft with a maximum certified takeoff weight of 26,000 lbs. is 2,000 miles long, the value of the flight determined under this paragraph (g)(5) is: $100.36 ((.313×(($.1449×500)+($.1105×1,000)+($.1062×500)))+$26.48). The aircraft valuation formula applies separately to each flight being valued under this paragraph (g). Therefore, the number of miles an employee has flown on employer-provided aircraft flights prior to the flight being valued does not affect the determination of the value of the flight.

(6) *Discretion to provide new formula.* The Commissioner may prescribe a different base aircraft valuation formula by regulation, Revenue Ruling or Revenue Procedure in the event that the calculation of the Standard Industry Fare Level is discontinued.

(7) *Aircraft multiples*—(i) *In general.* The aircraft multiples are based on the maximum certified takeoff weight of the aircraft. When applying the aircraft valuation formula to a flight, the appropriate aircraft multiple is multiplied by the product of the applicable SIFL cents-per-mile rates multiplied by the number of miles in the flight and then the terminal charge is added

to the product. For purposes of applying the aircraft valuation formula described in paragraph (g)(5) of this section, the aircraft multiples are as follows:

| Maximum certified take-off weight of the aircraft | Aircraft multiple for a control employee (percent) | Aircraft multiple for a non-control employee (percent) |
|---|---|---|
| 6,000 lbs. or less | 62.5 | 15.6 |
| 6,001–10,000 lbs. | 125 | 23.4 |
| 10,001–25,000 lbs. | 300 | 31.3 |
| 25,001 lbs. or more | 400 | 31.3 |

(ii) *Flights treated as provided to a control employee.* Except as provided in paragraph (g)(12) of this section, any flight provided to an individual whose flight would be taxable to a control employee (as defined in paragraphs (g) (8) and (9) of this section) as the recipient shall be valued as if such flight had been provided to that control employee. For example, assume that the chief executive officer of an employer, his spouse, and his two children fly on an employer-provided aircraft for personal purposes. Assume further that the maximum certified takeoff weight of the aircraft is 12,000 lbs. The amount includible in the employee's income is 4×((300 percent×the applicable SIFL cents-per-mile rates provided in paragraph (g)(5) of this section multiplied by the number of miles in the flight) plus the applicable terminal charge).

(8) *Control employee defined—Non-government employer*—(i) *Definition.* For purposes of this paragraph (g), a control employee of a non-government employer is any employee—

(A) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer, limited to the lesser of—

(*1*) One percent of all employees (increased to the next highest integer, if not an integer) or

(*2*) Ten employees;

(B) Who is among the top one percent most highly-paid employees of the employer (increased to the next highest integer, if not an integer) limited to a maximum of 50;

(C) Who owns a five-percent or greater equity, capital, or profits interest in the employer; or

(D) Who is a director of the employer.

(ii) *Special rules for control employee definition*—(A) *In general.* For purposes of this paragraph (g), any employee who is a family member (within the meaning of section 267(c)(4)) of a control employee is also a control employee. For purposes of paragraph (g)(8)(i)(B) of this section, the term ''employee'' does not include any individual unless such individual is a common-law employee, partner, or one-percent or greater shareholder of the employer. Pursuant to this paragraph (g)(8), an employee may be a control employee under more than one of the requirements listed in paragraphs (g)(8)(i) (A) through (D) of this section. For example, an employee may be both an officer under paragraph (g)(8)(i)(A) of this section and a highly-paid employee under paragraph (g)(8)(i)(B) of this section. In this case, for purposes of the officer limitation rule of paragraph (g)(8)(i)(A) of this section and the highly-paid employee limitation rule of paragraph (g)(8)(i)(B) of this section, the employee would be counted in applying both limitations. For purposes of determining the one-percent limitation under paragraphs (g)(8)(i) (A) and (B) of this section, an employer shall exclude from consideration employees described in §1.132–8(b)(3). Instead of applying the control employee definition of this paragraph (g)(8), an employer may treat all (and only) employees who are ''highly compensated'' employees (as defined in §1.132–8(f)) as control employees for purposes of this paragraph (g).

(B) *Special rules for officers, owners, and highly-paid control employees.* In no event shall an employee whose compensation is less than $50,000 be a control employee under paragraph (g)(8)(i) (A) or (B) of this section. For purposes of determining who is a five-percent (or one-percent) owner under this paragraph (g)(8), any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) five percent (or one-percent) or more of the fair market value of an entity (the ''owned entity'') is considered a five-percent (or one-percent) owner of all entities which would be aggregated with the owned entity under the rules of section 414(b), (c), (m), or (o). For purposes of determining who is an officer or director with respect to an employer under this paragraph (g)(8), notwithstanding anything in this section to the contrary, if the employer would be aggregated with other employers under the rules of section 414 (b), (c), (m), or (o), the officer definition and the limitations and the director definition are applied to each such separate employer rather than to the aggregated employer. An employee who is an officer or director of one employer (the "first employer") shall not be counted as an officer or a director of any other employer aggregated with the first employer under the rules of section 414 (b), (c), or (m). If applicable, the officer limitations rule of paragraph (g)(8)(i)(A) of this section is applied to employees in descending order of their compensation. Thus, if an employer has 11 board-appointed officers and the limit imposed under paragraph (g)(8)(i)(A) of this section is 10 officers, the employee with the least compensation of those officers would not be a control employee under paragraph (g)(8)(i)(A) of this section.

(9) *Control employee defined—Government employer.* For purposes of this paragraph (g), a control employee of a government employer is any—

(i) Elected official, or

(ii) Employee whose compensation equals or exceeds the compensation paid to a Federal Government employee holding a position at Executive Level V, determined under Chapter 11 of title 2, United States Code, as adjusted by section 5318 of title 5 United States Code.

For purposes of paragraph (f), the term "government" includes any Federal, state or local governmental unit, and any agency or instrumentality thereof. Instead of applying the control employee definition of paragraph (f)(6), an employer may treat all and only employees who are "highly compensated" employees (as defined in §1.132–8(f)) as control employees for purposes of this paragraph (f).

(10) *"Compensation" defined.* For purposes of this paragraph (g), the term "compensation" has the same meaning as in section 414(q)(7). Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c), (m), or (o). Levels of compensation shall be adjusted at the same time and in the same manner as provided in section 415(d). The first such adjustment was for calendar year 1988.

(11) *Treatment of former employees.* For purposes of this paragraph (g), an employee who was a control employee of the employer (as defined in this paragraph (g)) at any time after reaching age 55, or within three years of separation from the service of the employer, is a control employee with respect to flights taken after separation from the service of the employer. An individual who is treated as a control employee under this paragraph (g)(11) is not counted when determining the limitation of paragraph (g)(8)(i) (A) and (B) of this section. Thus, the total number of individuals treated as control employees under such paragraphs may exceed the limitations of such paragraphs to the extent that this paragraph (g)(11) applies.

(12) *Seating capacity rule*—(i) *In general*—(A) *General rule.* Where 50 percent or more of the regular passenger seating capacity of an aircraft (as used by the employer) is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)), the value of a flight on that aircraft by any employee who is not flying primarily for the employer's business (or who is flying primarily for the employer's business but the value of whose flight is not excludable under section 132(d) by reason of section 274(c)) is deemed to be zero. See §1.132–5 which limits the working condition fringe exclusion under section 132(d) to situations where the employee receives the flight in connection with the performance of services for the employer providing the aircraft.

(B) *Special rules*—(*1*) *Definition of "employee."* For purposes of this paragraph (g)(12), the term "employee" includes only employees of the employer, including a partner of a partnership, providing the aircraft and does not include independent contractors and directors of the employer. A flight taken by an individual other than an "employee" as defined in the preceding sentence is considered a flight taken by an employee for purposes of this paragraph (g)(12) only if that individual is treated as an employee pursuant to section 132(f)(1) or that individual's flight is treated as a flight taken by an employee pursuant to section 132(f)(2). If—

(*i*) A flight by an individual is not considered a flight taken by an employee (as defined in this paragraph (g)(12)(i)),

(*ii*) The value of that individual's flight is not excludable under section 132(d), and

(*iii*) The seating capacity rule of this paragraph (g) (12) otherwise applies, then the value of the flight provided to such an individual is the value of a flight provided to a non-control employee pursuant to paragraph (g)(5) of this section (even if the individual who would be taxed on the value of the flight is a control employee).

(*2*) *Example.* The special rules of paragraph (g)(12)(i)(B)(*1*) of this section are illustrated by the following example:

*Example.* Assume that 60 percent of the regular passenger seating capacity of an employer's aircraft is occupied by individuals whose flights are primarily for the employer's business and are excludable from income under section 132(d). If a control employee, his spouse, and his dependent child fly on the employer's aircraft for primarily personal reasons, the value of the three flights is deemed to be zero. If, however, the control employee's cousin were provided a flight on the employer's aircraft, the value of the flight taken by the cousin is determined by applying the aircraft valuation formula of paragraph (g)(5) of this section (including the terminal charge) and the non-control employee aircraft multiples of paragraph (g)(7) of this section.

(ii) *Application of 50-percent test to multiple flights.* The seating capacity rule of this paragraph (g)(12) must be met both at the time the individual whose flight is being valued boards the aircraft and at the time the individual deplanes. For example, assume that employee A boards an employer-provided aircraft for personal purposes in New York, New York, and that at that time 80 percent of the regular passenger seating capacity of the aircraft is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)) (''the business passengers''). If the aircraft flies directly to Hartford, Connecticut where all of the passengers, including A, deplane, the requirements of the seating capacity rule of this paragraph (g)(12) have been satisfied. If instead, some of the passengers, including A, remain on the aircraft in Hartford and the aircraft continues on to Boston, Massachusetts, where they all deplane, the requirements of the seating capacity rule of this paragraph (g)(12) will not be satisfied with respect to A's flight from New York to Boston unless at least 50 percent of the seats comprising the aircraft's regular passenger seating capacity were occupied by the business passengers at the time A deplanes in Boston.

(iii) *Regular passenger seating capacity.* (A) *General rule.* Except as otherwise provided, the regular passenger seating capacity of an aircraft is the maximum number of seats that have at any time on or prior to the date of the flight been on the aircraft (while owned or leased by the employer). Except to the extent excluded pursuant to paragraph (g)(12)(v) of this section, regular seating capacity includes all seats which may be occupied by members of the flight crew. It is irrelevant that, on a particular flight, less than the maximum number of seats are available for use because, for example, some of the seats are removed.

(B) *Special rules.* When determining the maximum number of seats that have at any time on or prior to the date of the flight been on the aircraft (while owned or leased by the employer), seats that could not at any time be legally used during takeoff and have not at any time been used during takeoff are not counted. As of the date an employer permanently reduces the seating capacity of an aircraft, the regular passenger seating capacity is the reduced number of seats on the aircraft. The previous sentence shall not apply if at any time within 24 months after such reduction any seats are added in the aircraft. Unless the conditions of this paragraph (g)(12)(iii)(B) are satisfied, jumpseats and removable seats used solely for purposes of flight crew training are counted for purposes of the seating capacity rule of this paragraph (g)(12).

(iv) *Examples.* The rules of paragraph (g)(12)(iii) of this section are illustrated by the following examples:

*Example 1.* Employer A and employer B order the same aircraft, except that A orders it with 10 seats and B orders it with eight seats. A always uses its aircraft as a 10-seat aircraft; B always uses its aircraft as an eight-seat aircraft. The regular passenger seating capacity of A's aircraft is 10 and of B's aircraft is eight.

*Example 2.* Assume the same facts as in example (1), except that whenever A's chief executive officer and spouse use the aircraft eight seats are removed. Even if substantially all of the use of the aircraft is by the chief executive officer and spouse, the regular passenger seating capacity of the aircraft is 10.

*Example 3.* Assume the same facts as in example (1), except that whenever more than eight people want to fly in B's aircraft, two extra seats are added. Even if substantially all of the use of the aircraft occurs with eight seats, the regular passenger seating capacity of the aircraft is 10.

*Example 4.* Employer C purchases an aircraft with 12 seats. Three months later C remodels the interior of the aircraft and permanently removes four of the seats. Upon completion of the remodeling, the regular passenger seating capacity of the aircraft is eight. If, however, any seats are added within 24 months after the remodeling, the regular seating capacity of the aircraft is treated as 12 throughout the entire period.

(v) *Seats occupied by flight crew.* When determining the regular passenger seating capacity of an aircraft, any seat occupied by a member of the flight crew (whether or not such individual is an employee of the employer providing the aircraft) shall not be counted, unless the purpose of the flight by such individual is not primarily to serve as a member of the flight crew. If the seat occupied by a member of the flight crew is not counted as a passenger seat pursuant to the previous sentence, such member of the flight crew is disregarded in applying the 50-percent test described in the first sentence of paragraph (g)(12)(i) of this section. For example, assume that prior to application of this paragraph (g)(12)(v) the regular passenger seating capacity of an aircraft is one. Assume further that an employee pilots the aircraft and that the employee's flight is nor primarily for the employer's business. If the employee's spouse occupies the other seat for personal purposes, the seating capacity rule is not met and the value of both flights must be included in the employee's income. If, however, the employee's flight were primarily for the employer's business (unrelated to serving as a member of the flight crew), then the seating capacity rule is met and the value of the flight for the employee's spouse is deemed to be zero. If the employee's flight were primarily to serve as a member of the flight crew, then the seating capacity rule is not met and the value of a flight by any passenger for primarily personal reasons is not deemed to be zero.

(13) *Erroneous use of the non-commercial flight valuation rule*—(i) *Certain errors in the case of a flight by a control employee.* If—

(A) The non-commercial flight valuation rule of this paragraph (g) is applied by an employer or a control employee, as the case may be, on a return as originally filed or on an amended return on the grounds that either—

(*1*) The control employee is not in fact a control employee, or

(*2*) The aircraft is within a specific weight classification, and

(B) Either position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position. With respect to the weight classifications, the previous sentence does not apply if the position taken is that the weight of the aircraft is greater than it is subsequently determined to be. If, with respect to a flight by a control employee, the seating capacity rule of paragraph (g)(12) of this section is used by an employer or the control employee, as the case may be, on a return as originally filed or on an amended return, the valuation rule of this paragraph (g) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position.

(ii) *Value of flight excluded as a working condition fringe.* If either an employer or an employee, on a return as originally filed or on an amended return, excludes from the employee's income or wages all or any part of the value of a flight on the grounds that the flight was excludable as a working condition fringe under section 132, and that position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) is not available to value the flight taken by that employee by the person or persons taking the erroneous position. Instead, the general valuation rules of paragraphs (b) (5) and (6) of this section apply.

(14) *Consistency rules*—(i) *Use by employer*. Except as otherwise provided in paragraph (g)(13) or paragraph (g)(14)(iii) of this section or in §1.132–5(m)(4), if the non-commercial flight valuation rule of this paragraph (g) is used by an employer to value any flight provided in a calendar year, the rule must be used to value all flights provided to all employees in the calendar year.

(ii) *Use by employee*. Except as otherwise provided in paragraph (g)(13) or (g)(14)(iii) of this section or in §1.132–5(m)(4), if the non-commercial flight valuation rule of this paragraph (g) is used by an employee to value a flight provided by an employer in a calendar year, the rule must be used to value all flights provided to the employee by that employer in the calendar year.

(iii) *Exception for entertainment flights provided to specified individuals after October 22, 2004*. Notwithstanding the provisions of paragraph (g)(14)(i) of this section, an employer may use the general valuation rules of paragraph (b) of this section to value the entertainment use of an aircraft provided after October 22, 2004, to a specified individual. An employer who uses the general valuation rules of paragraph (b) of this section to value any entertainment use of an aircraft by a specified individual in a calendar year must use the general valuation rules of paragraph (b) of this section to value all entertainment use of aircraft provided to all specified individuals during that calendar year.

(A) *Specified individuals defined*. For purposes of paragraph (g)(14)(iii) of this section, *specified individual* is defined in section 274(e)(2)(B) and §1.274–9(b).

(B) *Entertainment defined*. For purposes of paragraph (g)(14)(iii) of this section, *entertainment* is defined in §1.274–2(b)(1).

(h) *Commercial flight valuation rule*—(1) *In general*. Under the commercial flight valuation rule of this paragraph (h), the value of a space-available flight (as defined in paragraph (h) (2) of this section) on a commercial aircraft is 25 percent of the actual carrier's highest unrestricted coach fare in effect for the particular flight taken. The rule of this paragraph (h) is available only to an individual described in §1.132–1(b)(1).

(2) *Space-available flight*. The commercial flight valuation rule of this paragraph (h) is available to value a space-available flight. The term ''space-available flight'' means a flight on a commercial aircraft—

(i) Which is subject to the same types of restrictions customarily associated with flying on an employee ''stand-by'' or ''space-available'' basis, and

(ii) Which meets the definition of a no-additional-cost service under section 132(b), except that the flight is provided to an individual other than the employee or an individual treated as the employee under section 132(f). Thus, a flight is not a space-available flight if the employer guarantees the employee a seat on the flight or if the nondiscrimination requirements of section 132(h)(1) and §1.132–8 are not satisfied. A flight may be a space-available flight even if the airline that is the actual carrier is not the employer of the employee.

(3) *Commercial aircraft*. If the actual carrier does not offer, in the ordinary course of its business, air transportation to customers on a per-seat basis, the commercial flight valuation rule of this paragraph (h) is not available. Thus, if, in the ordinary course of its line of business, the employer only offers air transportation to customers on a charter basis, the commercial flight valuation rule of this paragraph (h) may not be used to value a space-available flight on the employer's aircraft. If the commercial flight valuation rule is not available, the flight may be valued under the non-commercial flight valuation rule of paragraph (g) of this section.

(4) *Timing of inclusion*. The date that the flight is taken is the relevant date for purposes of applying section 61(a)(1) and this section to a space-available flight on a commercial aircraft. The date of purchase or issuance of a pass or ticket is not relevant. Thus, this

section applies to a flight taken on or after January 1, 1989, regardless of the date on which the pass or ticket for the flight was purchased or issued.

(5) *Consistency rules*—(i) *Use by employer.* If the commercial flight valuation rule of this paragraph (h) is used by an employer to value any flight provided in a calendar year, the rule must be used to value all flights eligible for use of the rule provided in the calendar year.

(ii) *Use by employee.* If the commercial flight valuation rule of this paragraph (h) is used by an employee to value a flight provided by an employer in a calendar year, the rule must be used to value all flights provided by that employer eligible for use of the rule taken by such employee in the calendar year.

(i) [Reserved]

(j) *Valuation of meals provided at an employer-operated eating facility for employees*—(1) *In general.* The valuation rule of this paragraph (j) may be used to value a meal provided at an employer-operated eating facility for employees (as defined in §1.132–7). For rules relating to an exclusion for the value of meals provided at an employer-operated eating facility for employees, see section 132(e)(2) and §1.132–7.

(2) *Valuation formula*—(i) *In general.* The value of all meals provided at an employer-operated eating facility for employees during a calendar year (''total meal value'') is 150 percent of the direct operating costs of the eating facility determined separately with respect to such eating facility whether or not the direct operating costs test is applied separately to such eating facility under §1.132–7(b)(2). For purposes of this paragraph (j), the definition of direct operating costs provided in §1.132–7(b) and the adjustments specified in §1.132–7(a)(2) apply. The taxable value of meals provided at an eating facility may be determined in two ways. The ''individual meal subsidy'' may be treated as the taxable value of a meal provided at the eating facility (see paragraph (j)(2)(ii) of this section) to a particular employee. Alternatively, the employer may allocate the ''total meal subsidy'' among employees (see paragraph (j)(2)(iii) of this section).

(ii) *''Individual meal subsidy'' defined.* The ''individual meal subsidy'' is determined by multiplying the amount paid by the employee for a particular meal by a fraction, the numerator of which is the total meal value and the denominator of which is the gross receipts of the eating facility for the calendar year and then subtracting the amount paid by the employee for the meal. The taxable value of meals provided to a particular employee during a calendar year, therefore, is the sum of the individual meal subsidies provided to the employee during the calendar year. This rule is available only if there is a charge for each meal selection and if each employee is charged the same price for any given meal selection.

(iii) *Allocation of ''total meal subsidy.''* Instead of using the individual meal subsidy method provided in paragraph (j)(2)(ii) of this section, the employer may allocate the ''total meal subsidy'' (total meal value less the gross receipts of the facility) among employees in any manner reasonable under the circumstances. It will be presumed reasonable for an employer to allocate the total meal subsidy on a per-employee basis if the employer has information that would substantiate to the satisfaction of the Commissioner that each employee was provided approximately the same number of meals at the facility.

(k) *Commuting valuation rule for certain employees*—(1) *In general.* Under the rule of this paragraph (k), the value of the commuting use of employer-provided transportation may be determined under paragraph (k)(3) of this section if the following criteria are met by the employer and employee with respect to the transportation:

(i) The transportation is provided, solely because of unsafe conditions, to an employee who would ordinarily walk or use public transportation for commuting to or from work;

(ii) The employer has established a written policy (e.g., in the employer's personnel manual) under which the transportation is not provided for the employee's personal purposes other than for commuting due to unsafe conditions and the employer's practice in fact corresponds with the policy;

(iii) The transportation is not used for personal purposes other than commuting due to unsafe conditions; and

(iv) The employee receiving the employer-provided transportation is a qualified employee of the employer (as defined in paragraph (k)(6) of this section).

(2) *Trip-by-trip basis.* The special valuation rule of this paragraph (k) applies on a trip-by-trip basis. If an employer and employee fail to meet the criteria of paragraph (k)(1) of this section with respect to any trip, the value of the transportation for that trip is not determined under paragraph (k)(3) of this section and the amount includible in the employee's income is determined by reference to the fair market value of the transportation.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (k) are satisfied, the value of the commuting use of the employer-provided transportation is $1.50 per one-way commute (*i.e.*, from home to work or from work to home).

(ii) *Value per employee.* If transportation is provided to more than one qualified employee at the same time, the amount includible in the income of each employee is $1.50 per one-way commute.

(4) *Definition of employer-provided transportation.* For purposes of this paragraph (k), ''employer-provided transportation'' means transportation by vehicle (as defined in paragraph (f)(4) of this section) that is purchased by the employer (or that is purchased by the employee and reimbursed by the employer) from a party that is not related to the employer for the purpose of transporting a qualified employee to or from work. Reimbursements made by an employer to an employee to cover the cost of purchasing transportation (e.g., hiring cabs) must be made under a bona fide reimbursement arrangement.

(5) *Unsafe conditions.* Unsafe conditions exist if a reasonable person would, under the facts and circumstances, consider it unsafe for the employee to walk to or from home, or to walk to or use public transportation at the time of day the employee must commute. One of the factors indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or residence at the time of day the employee must commute.

(6) *Qualified employee defined*—(i) *In general.* For purposes of this paragraph (k), a qualified employee is one who meets the following requirements with respect to the employer:

(A) The employee performs services during the current year, is paid on an hourly basis, is not claimed under section 213(a)(1) of the Fair Labor Standards Act of 1938 (as amended), 29 U.S.C. 201–219 (FLSA), to be exempt from the minimum wage and maximum hour provisions of the FLSA, and is within a classification with respect to which the employer actually pays, or has specified in writing that it will pay, compensation for overtime equal to or exceeding one and one-half times the regular rate as provided by section 207 of the FLSA; and

(B) The employee does not receive compensation from the employer in excess of the amount permitted by section 414(q)(1)(C) of the Code.

(ii) *''Compensation'' and ''paid on an hourly basis'' defined.* For purposes of this paragraph (k), ''compensation'' has the same meaning as in section 414(q)(7). Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c), (m), or (o). Levels of compensation shall be adjusted at the same time and in the same manner as provided in section 415(d). If an employee's compensation is stated on an annual basis, the employee is treated as ''paid on an hourly basis'' for purposes of this paragraph (k) as long as the employee is not claimed to be exempt from the minimum wage and maximum hour provisions of the FLSA and is paid overtime wages either equal to or exceeding one and one-half the employee's regular hourly rate of pay.

(iii) *FLSA compliance required.* An employee will not be considered a qualified employee for purposes of this paragraph (k), unless the employer is in compliance with the recordkeeping requirements concerning that employee's wages, hours, and other conditions and practices of employment as provided in section 211(c) of the FLSA and 29 CFR part 516.

(iv) *Issues arising under the FLSA.* If questions arise concerning an employee's classification under the FLSA, the pronouncements and rulings of the Administrator of the Wage and Hour Division, Department of Labor are determinative.

(v) *Non-qualified employees.* If an employee is not a qualified employee within the meaning of this paragraph (k)(6), no portion of the value of the commuting use of employer-provided transportation is excluded under this paragraph (k).

(7) *Examples.* This paragraph (k) is illustrated by the following examples:

*Example 1.* A and B are word-processing clerks employed by Y, an accounting firm in a large metropolitan area, and both are qualified employees under paragraph (k)(6) of this section. The normal working hours for A and B are from 11:00 p.m. until 7:00 a.m. and public transportation, the only means of transportation available to A or B, would be considered unsafe by a reasonable person at the time they are required to commute from home to work. In response, Y hires a car service to pick up A and B at their homes each evening for purposes of transporting them to work. The amount includible in the income of both A and B is $1.50 for the one-way commute from home to work.

*Example 2.* Assume the same facts as in *Example 1,* except that Y also hires a car service to return A and B to their homes each morning at the conclusion of their shifts and public transportation would not be considered unsafe by a reasonable person at the time of day A and B commute to their homes. The value of the commute from work to home is includible in the income of both A and B by reference to fair market value since unsafe conditions do not exist for that trip.

*Example 3.* C is an associate for Z, a law firm in a metropolitan area. The normal working hours for C's law firm are from 9 a.m. until 6 p.m., but C's ordinary office hours are from 10 a.m. until 8 p.m. Public transportation, the only means of transportation available to C at the time C commutes from work to home during the evening, would be considered unsafe by a reasonable person. In response, Z hires a car service to take C home each evening. C does not receive annual compensation from Z in excess of the amount permitted by section 414(q)(1)(C) of the Code. However, C is treated as an employee exempt from the provisions of the FLSA and, accordingly, is not paid overtime wages. Therefore, C is not a qualified employee within the meaning of paragraph (k)(6) of this section. The value of the commute from work to home is includible in C's income by reference to fair market value.

(8) *Effective date.* This paragraph (k) applies to employer-provided transportation provided to a qualified employee on or after July 1, 1991.

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### § 1.61–22 Taxation of split-dollar life insurance arrangements.

(a) *Scope*—(1) *In general.* This section provides rules for the taxation of a split-dollar life insurance arrangement for purposes of the income tax, the gift tax, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), and the Self-Employment Contributions Act of 1954 (SECA). For the Collection of Income Tax at Source on Wages, this section also provides rules for the taxation of a split-dollar life insurance arrangement, other than a payment under a split-dollar life insurance arrangement that is a split-dollar loan under § 1.7872–15(b)(1). A split-dollar life insurance arrangement (as defined in paragraph (b) of this section) is subject to the rules of paragraphs (d) through (g) of this section, § 1.7872–15, or general tax rules. For rules to determine which rules apply to a split-dollar life insurance arrangement, see paragraph (b)(3) of this section.

(2) *Overview.* Paragraph (b) of this section defines a split-dollar life insurance arrangement and provides rules to determine whether an arrangement is subject to the rules of paragraphs (d) through (g) of this section, § 1.7872–15, or general tax rules. Paragraph (c) of this section defines certain other terms. Paragraph (d) of this section sets forth rules for the taxation of economic benefits provided under a split-dollar life insurance arrangement. Paragraph (e) of this section sets forth rules for the taxation of amounts received under a life insurance contract that is part of a split-dollar life insurance arrangement. Paragraph (f) of this section provides rules for additional tax consequences of a split-dollar life insurance arrangement, including the treatment of death benefit proceeds. Paragraph (g) of this section provides rules for the transfer of a life insurance

contract (or an undivided interest in the contract) that is part of a split-dollar life insurance arrangement. Paragraph (h) of this section provides examples illustrating the application of this section. Paragraph (j) of this section provides the effective date of this section.

(b) *Split-dollar life insurance arrangement*—(1) *In general.* A split-dollar life insurance arrangement is any arrangement between an owner and a non-owner of a life insurance contract that satisfies the following criteria—

(i) Either party to the arrangement pays, directly or indirectly, all or any portion of the premiums on the life insurance contract, including a payment by means of a loan to the other party that is secured by the life insurance contract;

(ii) At least one of the parties to the arrangement paying premiums under paragraph (b)(1)(i) of this section is entitled to recover (either conditionally or unconditionally) all or any portion of those premiums and such recovery is to be made from, or is secured by, the proceeds of the life insurance contract; and

(iii) The arrangement is not part of a group-term life insurance plan described in section 79 unless the group-term life insurance plan provides permanent benefits to employees (as defined in §1.79–0).

(2) *Special rule*—(i) *In general.* Any arrangement between an owner and a non-owner of a life insurance contract is treated as a split-dollar life insurance arrangement (regardless of whether the criteria of paragraph (b)(1) of this section are satisfied) if the arrangement is described in paragraph (b)(2)(ii) or (iii) of this section.

(ii) *Compensatory arrangements.* An arrangement is described in this paragraph (b)(2)(ii) if the following criteria are satisfied—

(A) The arrangement is entered into in connection with the performance of services and is not part of a group-term life insurance plan described in section 79;

(B) The employer or service recipient pays, directly or indirectly, all or any portion of the premiums; and

(C) Either—

(*1*) The beneficiary of all or any portion of the death benefit is designated by the employee or service provider or is any person whom the employee or service provider would reasonably be expected to designate as the beneficiary; or

(*2*) The employee or service provider has any interest in the policy cash value of the life insurance contract.

(iii) *Shareholder arrangements.* An arrangement is described in this paragraph (b)(2)(iii) if the following criteria are satisfied—

(A) The arrangement is entered into between a corporation and another person in that person's capacity as a shareholder in the corporation;

(B) The corporation pays, directly or indirectly, all or any portion of the premiums; and

(C) Either—

(*1*) The beneficiary of all or any portion of the death benefit is designated by the shareholder or is any person whom the shareholder would reasonably be expected to designate as the beneficiary; or

(*2*) The shareholder has any interest in the policy cash value of the life insurance contract.

(3) *Determination of whether this section or §1.7872–15 applies to a split-dollar life insurance arrangement*—(i) *Split-dollar life insurance arrangements involving split-dollar loans under §1.7872–15.* Except as provided in paragraph (b)(3)(ii) of this section, paragraphs (d) through (g) of this section do not apply to any split-dollar loan as defined in §1.7872–15(b)(1). Section 1.7872–15 applies to any such loan. *See* paragraph (b)(5) of this section for the treatment of a payment made by a non-owner under a split-dollar life insurance arrangement if the payment is not a split-dollar loan.

(ii) *Exceptions.* Paragraphs (d) through (g) of this section apply (and §1.7872–15 does not apply) to any split-dollar life insurance arrangement if—

(A) The arrangement is entered into in connection with the performance of services, and the employer or service recipient is the owner of the life insurance contract (or is treated as the owner of the contract under paragraph (c)(1)(ii)(A)(*1*) of this section); or

(B) The arrangement is entered into between a donor and a donee (for example, a life insurance trust) and the donor is the owner of the life insurance contract (or is treated as the owner of the contract under paragraph (c)(1)(ii)(A)(*2*) of this section).

(4) *Consistency requirement.* A split-dollar life insurance arrangement described in paragraph (b)(1) or (2) of this section must be treated in the same manner by the owner and the non-owner of the life insurance contract under either the rules of this section or §1.7872–15. In addition, the owner and non-owner must fully account for all amounts under the arrangement under paragraph (b)(5) of this section, paragraphs (d) through (g) of this section, or §1.7872–15.

(5) *Non-owner payments that are not split-dollar loans.* If a non-owner of a life insurance contract makes premium payments (directly or indirectly) under a split-dollar life insurance arrangement, and the payments are neither split-dollar loans nor consideration for economic benefits described in paragraph (d) of this section, then neither the rules of paragraphs (d) through (g) of this section nor the rules in §1.7872–15 apply to such payments. Instead, general income tax, employment tax, self-employment tax, and gift tax principles apply to the premium payments. *See*, for example, §1.61–2(d)(2)(ii)(A).

(6) *Waiver, cancellation, or forgiveness.* If a repayment obligation described in §1.7872–15(a)(2) is waived, cancelled, or forgiven at any time, then the parties must take the amount waived, cancelled, or forgiven into account in accordance with the relationships between the parties (for example, as compensation in the case of an employee-employer relationship).

(7) *Change in the owner.* If payments made by a non-owner to an owner were treated as split-dollar loans under §1.7872–15 and the split-dollar life insurance arrangement is modified such that, after the modification, the non-owner is the owner (within the meaning of paragraph (c)(1) of this section) of the life insurance contract under the arrangement, paragraphs (d) through (g) of this section apply to the split-dollar life insurance arrangement from the date of the modification. The payments made (both before and after the modification) are not treated as split-dollar loans under §1.7872–15 on or after the date of the modification. The non-owner of the life insurance contract under the modified split-dollar life insurance arrangement must fully take into account all economic benefits provided under the arrangement under paragraph (d) of this section on or after the date of the modification. For the treatment of a transfer of the contract when the unmodified arrangement is governed by paragraphs (d) through (g) of this section, *see* paragraph (g) of this section.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Owner*—(i) *In general.* With respect to a life insurance contract, the person named as the policy owner of such contract generally is the owner of such contract. If two or more persons are named as policy owners of a life insurance contract and each person has, at all times, all the incidents of ownership with respect to an undivided interest in the contract, each person is treated as the owner of a separate contract to the extent of such person's undivided interest. If two or more persons are named as policy owners of a life insurance contract but each person does not have, at all times, all the incidents of ownership with respect to an undivided interest in the contract, the person who is the first-named policy owner is treated as the owner of the entire contract.

(ii) *Special rule for certain arrangements*—(A) *In general.* Notwithstanding paragraph (c)(1)(i) of this section—

(*1*) An employer or service recipient is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into in connection with the performance of services if, at all times, the only economic benefit that will be provided under the arrangement is current life insurance protection as described in paragraph (d)(3) of this section; and

(*2*) A donor is treated as the owner of a life insurance contract under a split-dollar life insurance arrangement that is entered into between a donor and a donee (for example, a life insurance trust) if, at all times, the only economic benefit that will be provided under the arrangement is current life insurance protection as described in paragraph (d)(3) of this section.

(B) *Modifications.* If an arrangement described in paragraph (c)(1)(ii)(A) of this section is modified such that the arrangement is no longer described in paragraph (c)(1)(ii)(A) of this section, the following rules apply:

(*1*) If, immediately after such modification, the employer, service recipient, or donor is the owner of the life insurance contract under the split-dollar life insurance arrangement (determined without regard to paragraph (c)(1)(ii)(A) of this section), the employer, service recipient, or donor continues to be treated as the owner of the life insurance contract.

(*2*) If, immediately after such modification, the employer, service recipient, or donor is not the owner of the life insurance contract under the split-dollar life insurance arrangement (determined without regard to paragraph (c)(1)(ii)(A) of this section), the employer, service recipient, or donor is treated as having made a transfer of the entire life insurance contract to the employee, service provider, or donee under the rules of paragraph (g) of this section as of the date of such modification.

(*3*) For purposes of this paragraph (c)(1)(ii)(B), entering into a successor split-dollar life insurance arrangement that has the effect of providing any economic benefit in addition to that described in paragraph (d)(3) of this section is treated as a modification of the prior split-dollar life insurance arrangement.

(iii) *Attribution rules for compensatory arrangements.* For purposes of this section, if a split-dollar life insurance arrangement is entered into in connection with the performance of services, the employer or service recipient is treated as the owner of the life insurance contract if the owner (within the meaning of paragraph (c)(1)(i) of this section) of the life insurance contract under the split-dollar life insurance arrangement is—

(A) A trust described in section 402(b);

(B) A trust that is treated as owned (within the meaning of sections 671 through 677) by the employer or the service recipient;

(C) A welfare benefit fund within the meaning of section 419(e)(1); or

(D) A member of the employer or service recipient's controlled group (within the meaning of section 414(b)) or a trade or business that is under common control with the employer or service recipient (within the meaning of section 414(c)).

(iv) *Life insurance contracts owned by partnerships.* [Reserved]

(2) *Non-owner*—(i) *Definition.* With respect to a life insurance contract, a non-owner is any person (other than the owner of such contract under paragraph (c)(1) of this section) that has any direct or indirect interest in such contract (but not including a life insurance company acting only in its capacity as the issuer of a life insurance contract).

(ii) *Example.* The following example illustrates the provisions of this paragraph (c)(2):

*Example.* (i) On January 1, 2009, Employer R and Trust T, an irrevocable life insurance trust that is not treated under sections 671 through 677 as owned by a grantor or other person, enter into a split-dollar life insurance arrangement in connection with the performance of services under which R will pay all the premiums on the life insurance contract until the termination of the arrangement or the death of E, an employee of R. C, the beneficiary of T, is E's child. R is the owner of the contract under paragraph (c)(1)(i) of this section. E is the insured under the life insurance contract. Upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums or the policy cash value of the contract and T will be entitled to receive any remaining amounts. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but T has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R.

(ii) Because E and T each have an indirect interest in the life insurance contract that is part of the split-dollar life insurance arrangement, each is a non-owner under paragraph (c)(2)(i) of this section. E and T each are provided economic benefits described in paragraph (d)(2) of this section pursuant to the split-dollar life insurance arrangement. Economic benefits are provided by owner R to E as a payment of compensation, and separately provided by E to T as a gift.

(3) *Transfer of entire contract or undivided interest therein*. A transfer of the ownership of a life insurance contract (or an undivided interest in such contract) that is part of a split-dollar life insurance arrangement occurs on the date that a non-owner becomes the owner (within the meaning of paragraph (c)(1) of this section) of the entire contract or of an undivided interest in the contract.

(4) *Undivided interest*. An undivided interest in a life insurance contract consists of an identical fractional or percentage interest or share in each right, benefit, and obligation with respect to the contract. In the case of any arrangement purporting to create undivided interests where, in substance, the rights, benefits or obligations are shared to any extent among the holders of such interests, the arrangement will be treated as a split-dollar life insurance arrangement.

(5) *Employment tax*. The term employment tax means any tax imposed by, or collected under, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), and the Collection of Income Tax at Source on Wages.

(6) *Self-employment tax*. The term self-employment tax means the tax imposed by the Self-Employment Contributions Act of 1954 (SECA).

(d) *Economic benefits provided under a split-dollar life insurance arrangement*—(1) *In general*. In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, economic benefits are treated as being provided to the non-owner of the life insurance contract. The non-owner (and the owner for gift and employment tax purposes) must take into account the full value of all economic benefits described in paragraph (d)(2) of this section, reduced by the consideration paid directly or indirectly by the non-owner to the owner for those economic benefits. Depending on the relationship between the owner and the non-owner, the economic benefits may constitute a payment of compensation, a distribution under section 301, a contribution to capital, a gift, or a transfer having a different tax character. Further, depending on the relationship between or among a non-owner and one or more other persons (including a non-owner or non-owners), the economic benefits may be treated as provided from the owner to the non-owner and as separately provided from the non-owner to such other person or persons (for example, as a payment of compensation from an employer to an employee and as a gift from the employee to the employee's child).

(2) *Value of economic benefits*. The value of the economic benefits provided to a non-owner for a taxable year under the arrangement equals—

(i) The cost of current life insurance protection provided to the non-owner as determined under paragraph (d)(3) of this section;

(ii) The amount of policy cash value to which the non-owner has current access within the meaning of paragraph (d)(4)(ii) of this section (to the extent that such amount was not actually taken into account for a prior taxable year); and

(iii) The value of any economic benefits not described in paragraph (d)(2)(i) or (ii) of this section provided to the non-owner (to the extent not actually taken into account for a prior taxable year).

(3) *Current life insurance protection*—(i) *Amount of current life insurance protection*. In the case of a split-dollar life insurance arrangement described in paragraph (d)(1) of this section, the amount of the current life insurance protection provided to the non-owner for a taxable year (or any portion thereof in the case of the first year or the last year of the arrangement) equals the excess of the death benefit of the life insurance contract (including paid-up additions thereto) over the total amount payable to the owner (including any outstanding policy loans that offset amounts otherwise payable to the owner) under the split-dollar life insurance arrangement, less the portion of the policy cash value actually taken into account under paragraph (d)(1) of this section or paid for by the non-owner under paragraph (d)(1) of this section for the current taxable year or any prior taxable year.

(ii) *Cost of current life insurance protection.* The cost of current life insurance protection provided to the non-owner for any year (or any portion thereof in the case of the first year or the last year of the arrangement) equals the amount of the current life insurance protection provided to the non-owner (determined under paragraph (d)(3)(i) of this section) multiplied by the life insurance premium factor designated or permitted in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii) of this chapter).

(4) *Policy cash value*—(i) *In general.* For purposes of this paragraph (d), policy cash value is determined disregarding surrender charges or other similar charges or reductions. Policy cash value includes policy cash value attributable to paid-up additions.

(ii) *Current access.* For purposes of this paragraph (d), a non-owner has current access to that portion of the policy cash value—

(A) To which, under the arrangement, the non-owner has a current or future right; and

(B) That currently is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors.

(5) *Valuation date*—(i) *General rules.* For purposes of this paragraph (d), the amount of the current life insurance protection and the policy cash value shall be determined on the same valuation date. The valuation date is the last day of the non-owner's taxable year, unless the owner and non-owner agree to instead use the policy anniversary date as the valuation date. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, the value of such economic benefits is determined on the day that the arrangement terminates.

(ii) *Consistency requirement.* The owner and non-owner of the split-dollar life insurance arrangement must use the same valuation date. In addition, the same valuation date must be used for all years prior to termination of the split-dollar life insurance arrangement unless the parties receive consent of the Commissioner to change the valuation date.

(iii) *Artifice or device.* Notwithstanding paragraph (d)(5)(i) of this section, if any artifice or device is used to understate the amount of any economic benefit on the valuation date in paragraph (d)(5)(i) of this section, then, for purposes of this paragraph (d), the date on which the amount of the economic benefit is determined is the date on which the amount of the economic benefit is greatest during that taxable year.

(iv) *Special rule for certain taxes.* For purposes of employment tax (as defined in paragraph (c)(5) of this section), self-employment tax (as defined in paragraph (c)(6) of this section), and sections 6654 and 6655 (relating to the failure to pay estimated income tax), the portions of the current life insurance protection and the policy cash value that are treated as provided by the owner to the non-owner shall be treated as so provided on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, such portions of the current life insurance protection and the policy cash value shall be treated as so provided on the day that the arrangement terminates.

(6) *Examples.* The following examples illustrate the rules of this paragraph (d). Except as otherwise provided, both examples assume the following facts: employer (R) is the owner (as defined in paragraph (c)(1)(i) of this section) and employee (E) is the non-owner (as defined in paragraph (c)(2)(i) of this section) of a life insurance contract that is part of a split-dollar life insurance arrangement that is subject to the provisions of paragraphs (d) through (g) of this section; the contract is a life insurance contract as defined in section 7702 and not a modified endowment contract as defined in section 7702A; R does not withdraw or obtain a loan of any portion of the policy cash value and does not surrender any portion of the life insurance contract; the compensation paid to E is reasonable; E is not provided any economic benefits described in paragraph (d)(2)(iii) of this section; E does not

make any premium payments; E's taxable year is the calendar year; the value of the economic benefits is determined on the last day of E's taxable year; and E reports on E's Federal income tax return for each year that the split-dollar life insurance arrangement is in effect the amount of income required to be reported under paragraph (d) of this section. The examples are as follows:

*Example 1.* (i) *Facts.* On January 1 of year 1, R and E enter into the split-dollar life insurance arrangement. Under the arrangement, R pays all of the premiums on the life insurance contract until the termination of the arrangement or E's death. The arrangement provides that upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums paid or the policy cash value of the contract and E is entitled to receive any remaining amounts. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R. To fund the arrangement, R purchases a life insurance contract with constant death benefit protection equal to $1,500,000. R makes premium payments on the life insurance contract of $60,000 in each of years 1, 2, and 3. The policy cash value equals $55,000 as of December 31 of year 1, $140,000 as of December 31 of year 2, and $240,000 as of December 31 of year 3.

(ii) *Analysis.* Under the terms of the split-dollar life insurance arrangement, E has the right for year 1 and all subsequent years to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(4)(ii) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(2)(i) and (ii) of this section provided to E under the arrangement.

(iii) *Results for year 1.* For year 1, E is provided, under paragraph (d)(2)(ii) of this section, $0 of policy cash value (excess of $55,000 policy cash value determined as of December 31 of year 1 over $55,000 payable to R). For year 1, E is also provided, under paragraph (d)(2)(i) of this section, current life insurance protection of $1,445,000 ($1,500,000 minus $55,000 payable to R). Thus, E includes in gross income for year 1 the cost of $1,445,000 of current life insurance protection.

(iv) *Results for year 2.* For year 2, E is provided, under paragraph (d)(2)(ii) of this section, $20,000 of policy cash value ($140,000 policy cash value determined as of December 31 of year 2 minus $120,000 payable to R). For year 2, E is also provided, under paragraph (d)(2)(i) of this section, current life insurance protection of $1,360,000 ($1,500,000 minus the sum of $120,000 payable to R and the aggregate of $20,000 of policy cash value that E actually includes in income on E's year 1 and year 2 federal income tax returns). Thus, E includes in gross income for year 2 the sum of $20,000 of policy cash value and the cost of $1,360,000 of current life insurance protection.

(v) *Results for year 3.* For year 3, E is provided, under paragraph (d)(2)(ii) of this section, $40,000 of policy cash value ($240,000 policy cash value determined as of December 31 of year 3 minus the sum of $180,000 payable to R and $20,000 of aggregate policy cash value that E actually included in gross income on E's year 1 and year 2 federal income tax returns). For year 3, E is also provided, under paragraph (d)(2)(i) of this section, current life insurance protection of $1,260,000 ($1,500,000 minus the sum of $180,000 payable to R and $60,000 of aggregate policy cash value that E actually includes in gross income on E's year 1, year 2, and year 3 federal income tax returns). Thus, E includes in gross income for year 3 the sum of $40,000 of policy cash value and the cost of $1,260,000 of current life insurance protection.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1* except that E cannot directly or indirectly access any portion of the policy cash value, but the terms of the split-dollar life insurance arrangement or applicable state law provide that the policy cash value in excess of the amount payable to R is inaccessible to R's general creditors.

(ii) *Analysis.* Under the terms of the split-dollar life insurance arrangement or applicable state law, the portion of the policy cash value exceeding the amount payable to R is inaccessible to R's general creditors and E has a current or future right to that portion of the cash value. Thus, under paragraph (d)(4)(ii) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(2)(i) and (ii) of this section provided to E under the arrangement.

(iii) *Results for years 1, 2 and 3.* The results for this example are the same as the results in Example 1.

(e) *Amounts received under the contract*—(1) *In general.* Except as otherwise provided in paragraph (f)(3) of this section, any amount received under a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section (including, but not limited to, a policy owner dividend, proceeds of a specified policy loan described in paragraph (e)(2) of this section, or the proceeds of a withdrawal from or partial surrender of the life insurance contract) is treated, to the extent provided directly or indirectly to a non-owner of the life insurance contract, as though such amount had been paid to the owner of the life insurance contract and then paid by the owner to the non-owner. The amount received is taxable to the owner in accordance with the rules of section 72. The non-owner (and the owner for gift tax and employment tax purposes) must take the amount described in paragraph (e)(3) of this section into account as a payment of compensation, a distribution under section 301, a contribution to capital, a gift, or other transfer depending on the relationship between the owner and the non-owner.

(2) *Specified policy loan.* A policy loan is a specified policy loan to the extent—

(i) The proceeds of the loan are distributed directly from the insurance company to the non-owner;

(ii) A reasonable person would not expect that the loan will be repaid by the non-owner; or

(iii) The non-owner's obligation to repay the loan to the owner is satisfied or is capable of being satisfied upon repayment by either party to the insurance company.

(3) *Amount required to be taken into account.* With respect to a non-owner (and the owner for gift tax and employment tax purposes), the amount described in this paragraph (e)(3) is equal to the excess of—

(i) The amount treated as received by the owner under paragraph (e)(1) of this section; over

(ii) The amount of all economic benefits described in paragraphs (d)(2)(ii) and (iii) of this section actually taken into account by the non-owner (and the owner for gift tax and employment tax purposes) plus any consideration described in paragraph (d)(1) of this section paid by the non-owner for such economic benefits described in paragraphs (d)(2)(ii) and (iii) of this section. The amount determined under the preceding sentence applies only to the extent that neither this paragraph (e)(3)(ii) nor paragraph (g)(1)(ii) of this section previously has applied to such economic benefits.

(f) *Other tax consequences*—(1) *Introduction.* In the case of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, this paragraph (f) sets forth other tax consequences to the owner and non-owner of a life insurance contract that is part of the arrangement for the period prior to the transfer (as defined in paragraph (c)(3) of this section) of the contract (or an undivided interest therein) from the owner to the non-owner. *See* paragraph (g) of this section and §1.83–6(a)(5) for tax consequences upon the transfer of the contract (or an undivided interest therein).

(2) *Investment in the contract*—(i) *To the non-owner.* A non-owner does not receive any investment in the contract under section 72(e)(6) with respect to a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section.

(ii) *To owner.* Any premium paid by an owner under a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section is included in the owner's investment in the contract under section 72(e)(6). No premium or amount described in paragraph (d) of this section is deductible by the owner (except as otherwise provided in §1.83–6(a)(5)). Any amount paid by a non-owner, directly or indirectly, to the owner of the life insurance contract for current life insurance protection or for any other economic benefit under the life insurance contract is included in the owner's gross income and is included in the owner's investment in the life insurance contract for purposes of section 72(e)(6) (but only to the extent not otherwise so included by reason of having been paid by the owner as a premium or other consideration for the contract).

(3) *Treatment of death benefit proceeds*—(i) *Death benefit proceeds to beneficiary (other than the owner).* Any amount paid to a beneficiary (other than the owner) by reason of the death of the insured is excluded from gross income by such beneficiary under section 101(a) as an amount received under a life insurance contract to the extent such amount is allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account pursuant to paragraph (d)(1) of this section.

(ii) *Death benefit proceeds to owner as beneficiary.* Any amount paid or payable to an owner in its capacity as a beneficiary by reason of the death of the insured is excluded from gross income of the owner under section 101(a) as an amount received under a life insurance contract to the extent such amount is not allocable to current life insurance protection provided to the non-owner pursuant to the split-dollar life insurance arrangement, the cost of which was paid by the non-owner, or the value of which the non-owner actually took into account pursuant to paragraph (d)(1) of this section.

(iii) *Transfers of death benefit proceeds.* Death benefit proceeds paid to a party to a split-dollar life insurance arrangement (or the estate or beneficiary of that party) that are not excludable from that party's income under section 101(a) to the extent provided in paragraph (f)(3)(i) or (ii) of this section, are treated as transferred to that party in a separate transaction. The death benefit proceeds treated as so transferred will be taxed in a manner similar to other transfers. For example, if death benefit proceeds paid to an employee, the employee's estate, or the employee's beneficiary are not excludable from the employee's gross income under section 101(a) to the extent provided in paragraph (f)(3)(i) of this section, then such payment is treated as a payment of compensation by the employer to the employee.

(g) *Transfer of entire contract or undivided interest therein*—(1) *In general.* Upon a transfer within the meaning of paragraph (c)(3) of this section of a life insurance contract (or an undivided interest therein) to a non-owner (transferee), the transferee (and the owner (transferor) for gift tax and employment tax purposes) takes into account the excess of the fair market value of the life insurance contract (or the undivided interest therein) transferred to the transferee at that time over the sum of—

(i) The amount the transferee pays to the transferor to obtain the contract (or the undivided interest therein); and

(ii) The amount of all economic benefits described in paragraph (d)(2)(ii) and (iii) of this section actually taken into account by the transferee (and the transferor for gift tax and employment tax purposes), plus any consideration described in paragraph (d)(1) of this section paid by the transferee for such economic benefits described in paragraphs (d)(2)(ii) and (iii) of this section. The amount determined under the preceding sentence applies only to the extent that neither this paragraph (g)(1)(ii) nor paragraph (e)(3)(ii) of this section previously has applied to such economic benefits.

(2) *Determination of fair market value.* For purposes of paragraph (g)(1) of this section, the fair market value of a life insurance contract is the policy cash value and the value of all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than the value of current life insurance protection. Notwithstanding the preceding sentence, the fair market value of a life insurance contract for gift tax purposes is determined under §25.2512–6(a) of this chapter.

(3) *Exception for certain transfers in connection with the performance of services.* To the extent the ownership of a life insurance contract (or undivided interest in such contract) is transferred in connection with the performance of services, paragraph (g)(1) of this section does not apply until such contract (or undivided interest in such contract) is taxable under section 83. For purposes of paragraph (g)(1) of this section, fair market value is determined disregarding any lapse restrictions and at the time the transfer of

such contract (or undivided interest in such contract) is taxable under section 83.

(4) *Treatment of non-owner after transfer*—(i) *In general.* After a transfer of an entire life insurance contract (except when such transfer is in connection with the performance of services and the transfer is not yet taxable under section 83), the person who previously had been the non-owner is treated as the owner of such contract for all purposes, including for purposes of paragraph (b) of this section and for purposes of §1.61–2(d)(2)(ii)(A). After the transfer of an undivided interest in a life insurance contract (or, if later, at the time such transfer is taxable under section 83), the person who previously had been the non-owner is treated as the owner of a separate contract consisting of that interest for all purposes, including for purposes of paragraph (b) of this section and for purposes of §1.61–2(d)(2)(ii)(A).

(ii) *Investment in the contract after transfer*—(A) *In general.* The amount treated as consideration paid to acquire the contract under section 72(g)(1), in order to determine the aggregate premiums paid by the transferee for purposes of section 72(e)(6)(A) after the transfer (or, if later, at the time such transfer is taxable under section 83), equals the greater of the fair market value of the contract or the sum of the amounts determined under paragraphs (g)(1)(i) and (ii) of this section.

(B) *Transfers between a donor and a donee.* In the case of a transfer of a contract between a donor and a donee, the amount treated as consideration paid by the transferee to acquire the contract under section 72(g)(1), in order to determine the aggregate premiums paid by the transferee for purposes of section 72(e)(6)(A) after the transfer, equals the sum of the amounts determined under paragraphs (g)(1)(i) and (ii) of this section except that—

(*1*) The amount determined under paragraph (g)(1)(i) of this section includes the aggregate of premiums or other consideration paid or deemed to have been paid by the transferor; and

(*2*) The amount of all economic benefits determined under paragraph (g)(1)(ii) of this section actually taken into account by the transferee does not include such benefits to the extent such benefits were excludable from the transferee's gross income at the time of receipt.

(C) *Transfers of an undivided interest in a contract.* If a portion of a contract is transferred to the transferee, then the amount to be included as consideration paid to acquire the contract is determined by multiplying the amount determined under paragraph (g)(4)(ii)(A) of this section (as modified by paragraph (g)(4)(ii)(B) of this section, if the transfer is between a donor and a donee) by a fraction, the numerator of which is the fair market value of the portion transferred and the denominator of which is the fair market value of the entire contract.

(D) *Example.* The following example illustrates the rules of this paragraph (g)(4)(ii):

*Example.* (i) In year 1, donor D and donee E enter into a split-dollar life insurance arrangement as defined in paragraph (b)(1) of this section. D is the owner of the life insurance contract under paragraph (c)(1) of this section. The life insurance contract is not a modified endowment contract as defined in section 7702A. In year 5, D gratuitously transfers the contract, within the meaning of paragraph (c)(3) of this section, to E. At the time of the transfer, the fair market value of the contract is $200,000 and D had paid $50,000 in premiums under the arrangement. In addition, by the time of the transfer, E had current access to $80,000 of policy cash value which was excludable from E's gross income under section 102.

(ii) E's investment in the contract is $50,000, consisting of the $50,000 of premiums paid by D. The $80,000 of policy cash value to which E had current access is not included in E's investment in the contract because such amount was excludable from E's gross income when E had current access to that policy cash value.

(iii) *No investment in the contract for current life insurance protection.* Except as provided in paragraph (g)(4)(ii)(B) of this section, no amount allocable to current life insurance protection provided to the transferee (the cost of which was paid by the transferee or the value of which was provided to the transferee) is treated as consideration paid to acquire the contract under section 72(g)(1) to determine the aggregate premiums paid by the transferee for purposes of determining the transferee's investment in the contract under section 72(e) after the transfer.

(h) *Examples*. The following examples illustrate the rules of this section. Except as otherwise provided, each of the examples assumes that the employer (R) is the owner (as defined in paragraph (c)(1) of this section) of a life insurance contract that is part of a split-dollar life insurance arrangement subject to the rules of paragraphs (d) through (g) of this section, that the employee (E) is not provided any economic benefits described in paragraph (d)(2)(iii) of this section, that the life insurance contract is not a modified endowment contract under section 7702A, that the compensation paid to E is reasonable, and that E makes no premium payments. The examples are as follows:

*Example 1*. (i) In year 1, R purchases a life insurance contract on the life of E. R is named as the policy owner of the contract. R and E enter into an arrangement under which R will pay all the premiums on the life insurance contract until the termination of the arrangement or E's death. Upon termination of the arrangement or E's death, R is entitled to receive the greater of the aggregate premiums or the policy cash value of the contract. The balance of the death benefit will be paid to a beneficiary designated by E.

(ii) Because R is designated as the policy owner of the contract, R is the owner of the contract under paragraph (c)(1)(i) of this section. In addition, R would be treated as the owner of the contract regardless of whether R were designated as the policy owner under paragraph (c)(1)(i) of this section because the split-dollar life insurance arrangement is described in paragraph (c)(1)(ii)(A)(*1*) of this section. E is a non-owner of the contract. Under the arrangement between R and E, a portion of the death benefit is payable to a beneficiary designated by E. The arrangement is a split-dollar life insurance arrangement under paragraph (b)(1) or (2) of this section. Because R pays all the premiums on the life insurance contract, R provides to E the entire amount of the current life insurance protection E receives under the arrangement. Therefore, for each year that the split-dollar life insurance arrangement is in effect, E must include in gross income under paragraph (d)(1) of this section the value of current life insurance protection described in paragraph (d)(2)(i) of this section provided to E in each year.

*Example 2*. (i) The facts are the same as in *Example 1* except that, upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums or the policy cash value of the contract. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R.

(ii) Because R is designated as the policy owner, R is the owner of the contract under paragraph (c)(1)(i) of this section. E is a non-owner of the contract. For each year that the split-dollar life insurance arrangement is in effect, E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(4)(ii) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all the premiums on the life insurance contract, R provides to E all the economic benefits that E receives under the arrangement. Therefore, for each year that the split-dollar life insurance arrangement is in effect, E must include in gross income under paragraph (d)(1) of this section, the value of all economic benefits described in paragraph (d)(2)(i) and (ii) of this section provided to E in each year.

*Example 3*. (i) The facts are the same as in *Example 1* except that in year 5, R and E modify the split-dollar life insurance arrangement to provide that, upon termination of the arrangement or E's death, R is entitled to receive the greater of the aggregate premiums or one-half the policy cash value of the contract. Under the terms of the modified arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R.

(ii) For each year that the split-dollar life insurance arrangement is in effect, E must include in gross income under paragraph (d)(1) of this section the value of the economic benefits described in paragraph (d)(2)(i) of this section provided to E under the arrangement during that year. In year 5 (and subsequent years), E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(4)(ii) of this section, E has current access to such portion of the policy cash value. Thus, in year 5 (and each subsequent year), E must also include in gross income under paragraph (d)(1) of this section the value of the economic benefits described in paragraph (d)(2)(ii) of this section provided to E in each year.

(iii) The arrangement is not described in paragraph (c)(1)(ii)(A)(*1*) of this section after it is modified in year 5. Because R is the designated owner of the life insurance contract, R continues to be treated as the owner of the contract under paragraph (c)(1)(ii)(B)(*1*) of this section after the arrangement is modified. In addition, because the modification made by R and E in year 5 does not involve the transfer (within the meaning of paragraph (c)(3) of this section) of an undivided interest in the life insurance contract from R to E, the modification is not a transfer for purposes of paragraph (g) of this section.

*Example 4.* (i) The facts are the same as in *Example 2* except that in year 7, R and E modify the split-dollar life insurance arrangement to provide that, upon termination of the arrangement or E's death, R will be paid the lesser of 80 percent of the aggregate premiums or the policy cash value of the contract. Under the terms of the modified arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw at any time the portion of the policy cash value exceeding the lesser of 80 percent of the aggregate premiums paid by R or the policy cash value of the contract.

(ii) Commencing in year 7 (and in each subsequent year), E must include in gross income the economic benefits described in paragraph (d)(2)(ii) of this section as provided in this *Example 4(ii)* rather than as provided in *Example 2(ii)*. Thus, in year 7 (and in each subsequent year) E must include in gross income under paragraph (d) of this section, the excess of the policy cash value over the lesser of 80 percent of the aggregate premiums paid by R or the policy cash value of the contract (to the extent E did not actually include such amounts in gross income for a prior taxable year). In addition, in year 7 (and each subsequent year) E must also include in gross income the value of the economic benefits described in paragraph (d)(2)(i) of this section provided to E under the arrangement in each such year.

*Example 5.* (i) The facts are the same as in *Example 3* except that in year 7, E is designated as the policy owner. At that time, E's rights to the contract are substantially vested as defined in §1.83–3(b).

(ii) In year 7, R is treated as having made a transfer (within the meaning of paragraph (c)(3) of this section) of the life insurance contract to E. E must include in gross income the amount determined under paragraph (g)(1) of this section.

(iii) After the transfer of the contract to E, E is the owner of the contract and any premium payments by R will be included in E's income under paragraph (b)(5) of this section and §1.61–2(d)(2)(ii)(A) (unless R's payments are split-dollar loans as defined in §1.7872–15(b)(1)).

*Example 6.* (i) In year 1, E and R enter into a split-dollar life insurance arrangement as defined in paragraph (b)(2) of this section. Under the arrangement, R is required to make annual premium payments of $10,000 and E is required to make annual premium payments of $500. In year 5, a $500 policy owner dividend payable to E is declared by the insurance company. E directs the insurance company to use the $500 as E's premium payment for year 5.

(ii) For each year the arrangement is in effect, E must include in gross income the value of the economic benefits provided during the year, as required by paragraph (d)(2) of this section, over the $500 premium payments paid by E. In year 5, E must also include in gross income as compensation the excess, if any, of the $500 distributed to E from the proceeds of the policy owner dividend over the amount determined under paragraph (e)(3)(ii) of this section.

(iii) R must include in income the premiums paid by E during the years the split-dollar life insurance arrangement is in effect, including the $500 of the premium E paid in year 5 with proceeds of the policy owner dividend. R's investment in the contract is increased in an amount equal to the premiums paid by E, including the $500 of the premium paid by E in year 5 from the proceeds of the policy owner dividend. In year 5, R is treated as receiving a $500 distribution under the contract, which is taxed pursuant to section 72.

*Example 7.* (i) The facts are the same as in *Example 2* except that in year 10, E withdraws $100,000 from the cash value of the contract.

(ii) In year 10, R is treated as receiving a $100,000 distribution from the insurance company. This amount is treated as an amount received by R under the contract and taxed pursuant to section 72. This amount reduces R's investment in the contract under section 72(e). R is treated as paying the $100,000 to E as cash compensation, and E must include that amount in gross income less any amounts determined under paragraph (e)(3)(ii) of this section.

*Example 8.* (i) The facts are the same as in *Example 7* except E receives the proceeds of a $100,000 specified policy loan directly from the insurance company.

(ii) The transfer of the proceeds of the specified policy loan to E is treated as a loan by the insurance company to R. Under the rules of section 72(e), the $100,000 loan is not included in R's income and does not reduce R's investment in the contract. R is treated as paying the $100,000 of loan proceeds to E as cash compensation. E must include that amount in gross income less any amounts determined under paragraph (e)(3)(ii) of this section.

(i) [Reserved]

(j) *Effective date*—(1) *General rule*—(i) *In general.* This section applies to any split-dollar life insurance arrangement (as defined in paragraph (b)(1) or (2) of this section) entered into after September 17, 2003.

(ii) *Determination of when an arrangement is entered into.* For purposes of paragraph (j) of this section, a split-dollar life insurance arrangement is entered into on the latest of the following dates:

(A) The date on which the life insurance contract under the arrangement is issued;

(B) The effective date of the life insurance contract under the arrangement;

(C) The date on which the first premium on the life insurance contract under the arrangement is paid;

(D) The date on which the parties to the arrangement enter into an agreement with regard to the policy; or

(E) The date on which the arrangement satisfies the definition of a split-dollar life insurance arrangement (as defined in paragraph (b)(1) or (2) of this section).

(2) *Modified arrangements treated as new arrangements*—(i) *In general.* For purposes of paragraph (j)(1) of this section, if an arrangement entered into on or before September 17, 2003 is materially modified after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

(ii) *Non-material modifications.* The following is a non-exclusive list of changes that are not material modifications under paragraph (j)(2)(i) of this section (either alone or in conjunction with other changes listed in paragraphs (j)(2)(ii)(A) through (I) of this section)—

(A) A change solely in the mode of premium payment (for example, a change from monthly to quarterly premiums);

(B) A change solely in the beneficiary of the life insurance contract, unless the beneficiary is a party to the arrangement;

(C) A change solely in the interest rate payable under the life insurance contract on a policy loan;

(D) A change solely necessary to preserve the status of the life insurance contract under section 7702;

(E) A change solely to the ministerial provisions of the life insurance contract (for example, a change in the address to send payment);

(F) A change made solely under the terms of any agreement (other than the life insurance contract) that is a part of the split-dollar life insurance arrangement if the change is non-discretionary by the parties and is made pursuant to a binding commitment (whether set forth in the agreement or otherwise) in effect on or before September 17, 2003;

(G) A change solely in the owner of the life insurance contract as a result of a transaction to which section 381(a) applies and in which substantially all of the former owner's assets are transferred to the new owner of the policy;

(H) A change to the policy solely if such change is required by a court or a state insurance commissioner as a result of the insolvency of the insurance company that issued the policy; or

(I) A change solely in the insurance company that administers the policy as a result of an assumption reinsurance transaction between the issuing insurance company and the new insurance company to which the owner and the non-owner were not a party.

(iii) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may provide additional guidance with respect to other modifications that are not material for purposes of paragraph (j)(2)(i) of this section. See §601.601(d)(2)(ii) of this chapter.

[T.D. 9092, 68 FR 54344, Sept. 17, 2003; 68 FR 63735, Nov. 10, 2003]

### § 1.62–1 Adjusted gross income.

(a)–(b) [Reserved]

(c) *Deductions allowable in computing adjusted gross income.* The deductions specified in section 62(a) for purposes of computing adjusted gross income are—

(1) Deductions set forth in §1.62–1T(c); and

(2) Deductions allowable under part VI, subchapter B, chapter 1 of the Internal Revenue Code, (section 161 and following) that consist of expenses paid or incurred by the taxpayer in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement (as defined in §1.62–2) with his or

her employer. For the rules pertaining to expenses paid or incurred in taxable years beginning before January 1, 1989, see §1.62–1T (c)(2) and (f) (as contained in 26 CFR part 1 (§§1.61 to 1.169) revised April 1, 1992).

(d)–(h) [Reserved]

(i) *Effective date.* Paragraph (c) of this section is effective for taxable years beginning on or after January 1, 1989.

[T.D. 8451, 57 FR 57668, Dec. 7, 1992; 57 FR 60568, Dec. 21, 1992]

### §1.62–1T Adjusted gross income (temporary).

(a) *Basis for determining the amount of certain deductions.* The term ''adjusted gross income'' means the gross income computed under section 61 minus such of the deductions allowed by chapter 1 of the Code as are specified in section 62(a). Adjusted gross income is used as the basis for determining the following:

(1) The limitation on the amount of miscellaneous itemized deductions (under section 67).

(2) The limitation on the amount of the deduction for casualty losses (under section 165(h)(2)),

(3) The limitation on the amount of the deduction for charitable contributions (under section 170(b)(1)),

(4) The limitation on the amount of the deduction for medical and dental expenses (under section 213),

(5) The limitation on the amount of the deduction for qualified retirement contributions for active participants in certain pension plans (under section 219(g)), and

(6) The phase-out of the exemption from the disallowance of passive activity losses and credits (under section 469(i)(3)).

(b) *Double deduction not permitted.* Section 62 (a) merely specifies which of the deductions provided in chapter 1 of the Code shall be allowed in computing adjusted gross income. It does not create any new deductions. The fact that a particular item may be described in more than one of the paragraphs under section 62(a) does not permit the item to be deducted twice in computing adjusted gross income or taxable income.

(c) *Deductions allowable in computing adjusted gross income.* The deductions specified in section 62(a) for purposes of computing adjusted gross income are:

(1) Deductions allowable under chapter 1 of the Code (other than by part VII (section 211 and following), subchapter B of such chapter) that are attributable to a trade or business carried on by the taxpayer not consisting of services performed as an employee;

(2) [Reserved]

(3) For taxable years beginning after December 31, 1986, deductions allowable under section 162 that consist of expenses paid or incurred by a qualified performing artist (as defined in section 62(b)) in connection with the performance by him or her of services in the performing arts as an employee;

(4) Deductions allowable under part VI as losses from the sale or exchange of property;

(5) Deductions allowable under part VI, section 212, or section 611 that are attributable to property held for the production of rents or royalties;

(6) Deductions for depreciation or depletion allowable under sections 167 or 611 to a life tenant of property or to an income beneficiary of property held in trust or to an heir, legatee, or devisee of an estate;

(7) Deductions allowed by section 404 for contributions on behalf of a self-employed individual;

(8) Deductions allowed by section 219 for contributions to an individual retirement account described in section 408(a), or for an individual retirement annuity described in section 408(b);

(9) Deductions allowed by section 402(e)(3) with respect to a lump-sum distribution;

(10) For taxable years beginning after December 31, 1972, deductions allowed by section 165 for losses incurred in any transaction entered into for profit though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit;

(11) For taxable years beginning after December 31, 1976, deductions for alimony and separate maintenance payments allowed by section 215;

(12) Deductions allowed by section 194 for the amortization of reforestation expenditures; and

(13) Deductions allowed by section 165 for the repayment (made in a taxable year beginning after December 28, 1980) to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

(d) *Expenses directly related to a trade or business.* For the purpose of the deductions specified in section 62, the performance of personal services as an employee does not constitute the carrying on of a trade or business, except as otherwise expressly provided. The practice of a profession, not as an employee, is considered the conduct of a trade or business within the meaning of such section. To be deductible for the purposes of determining adjusted gross income, expenses must be those directly, and not those merely remotely, connected with the conduct of a trade or business. For example, taxes are deductible in arriving at adjusted gross income only if they constitute expenditures directly attributable to a trade or business or to property from which rents or royalties are derived. Thus, property taxes paid or incurred on real property used in a trade or business are deductible, but state taxes on net income are not deductible even though the taxpayer's income is derived from the conduct of a trade or business.

(e) *Reimbursed and unreimbursed employee expenses*—(1) *In general.* Expenses paid or incurred by an employee that are deductible from gross income under part VI in computing taxable income (determined without regard to section 67) and for which the employee is reimbursed by the employer, its agent, or third party (for whom the employee performs a benefit as an employee of the employer) under an express agreement for reimbursement or pursuant to an *express* expense allowance arrangement may be deducted from gross income in computing adjusted gross income. Except as provided in paragraphs (e)(2) and (e)(4) of this section, for taxable years beginning after December 31, 1986, if the amount of a reimbursement made by an employer, its agent, or third party to an employee is less than the total amount of the business expenses paid or incurred by the employee, the determination of to which of the employee's business expenses the reimbursement applies and the amount of each expense that is covered by the reimbursement is made on the basis of all of the facts and circumstances of the particular case.

(2) *Facts and circumstances unclear on business expenses for meals and entertainment.* If—

(i) The facts and circumstances do not make clear—

(A) That a reimbursement does not apply to business expenses for meals or entertainment, or

(B) The amount of business expenses for meals or entertainment that is covered by the reimbursement, and

(ii) The employee pays or incurs business expenses for meals or entertainment,

the amount of the reimbursement that applies to such expenses (or portion thereof with respect to which the facts and circumstances are unclear) shall be determined by multiplying the amount of the employee's business expenses for meals and entertainment (or portion thereof with respect to which the facts and circumstances are unclear) by a fraction, the numerator of which is the total amount of the reimbursement (or portion thereof with respect to which the facts and circumstances are unclear) and the denominator of which is the aggregate amount of all the business expenses of the employee (or portion thereof with respect to which the facts and circumstances are unclear).

(3) *Deductibility of unreimbursed expenses.* The amount of expenses that is determined not to be reimbursed pursuant to paragraph (e) (1) or (2) of this section is deductible from adjusted gross income in determining the employee's taxable income subject to the limitations applicable to such expenses (e.g., the 2-percent floor of section 67 and the 80-percent limitation on meal and entertainment expenses provided for in section 274(n)).

(4) *Unreimbursed expenses of State legislators.* For taxable years beginning

after December 31, 1986, any portion of the amount allowed as a deduction to State legislators pursuant to section 162(h)1)(B) that is not reimbursed by the State or a third party shall be allocated between lodging and meals in the same ratio as the amounts allowable for lodging and meals under the Federal per diem applicable to the legislator's State capital at the end of the legislator's taxable year (see Appendix 1–A of the Federal Travel Regulations (FTR), which as of March 28, 1988, are contained in GSA Bulletin FPMR A–40, Supplement 20). For purposes of this paragraph (e)(4), the amount allowable for meals under the Federal per diem shall be the amount of the Federal per diem allowable for meals and incidental expenses reduced by $2 per legislative day (or other amount allocated to incidental expenses in 1–7.5(a)(2) of the FTR). The unreimbursed portion of each type of expense is deductible from adjusted gross income in determining the State legislator's taxable income subject to the limitations applicable to such expenses. For example, the unreimbursed portion allocable to meals shall be reduced by 20 percent pursuant to section 274(n) before being subjected to the 2-percent floor of section 67 for purposes of computing the taxable income of a State legislator. See §1.67–1T(a)(2).

(5) *Expenses paid directly by an employer, its agent, or third party.* In the case of an employer, its agent, or a third party who provides property or services to an employee or who pays an employee's expenses directly instead of reimbursing the employee, see section 132 and the regulations thereunder for the income tax treatment of such expenses.

(6) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

*Example 1.* During 1987, A, an employee, while on business trips away from home pays $300 for travel fares, $200 for lodging and $100 for meals. In addition, A pays $50 for business meals in the area of his place of employment (''local meals''), $250 for continuing education courses, and $100 for business-related entertainment (other than meals). The total amount of the reimbursements received by A for his employee expenses from his employer is $750, and it is assumed that A's expenses meet the deductibility requirements of sections 162 and 274. A includes the amount of the reimbursement in his gross income. A's employer designates the reimbursement to cover in full A's expenses for travel fares, lodging, and meals while away from home, local meals, and entertainment, and no facts or circumstances indicate a contrary intention of the employer. Because the facts and circumstances make clear the amount of A's business expenses for meals and entertainment that is covered by the reimbursement, the reimbursement will be allocated to these expenses. In determining his adjusted gross income under section 62, A may deduct the full amount of the reimbursement for travel fares, lodging, and meals while away from home, local meals, and entertainment. In determining his taxable income under section 63, A may deduct his expenses for continuing education courses to the extent allowable by sections 67 and 162.

*Example 2.* Assume the facts are the same as in example (1) except that the facts and circumstances make clear that the reimbursement covers all types of deductible expenses but they do not make clear the amount of each type of expense that is covered by the reimbursement. The amount of the reimbursement that is allocated to A's business expenses for meals and entertainment is $187.50. This amount is determined by multiplying the total amount of A's business expenses for meals and entertainment ($250) by the ratio of A's total reimbursement to A's total business expenses ($750/$1,000). The remaining amount of the reimbursement, $562.50 ($750 − $187.50), is allocated to A's business expenses other than meal and entertainment expenses. Therefore, in determining his adjusted gross income under section 62, A may deduct $750 for reimbursed business expenses (including meals and entertainment). In determining his taxable income under section 63, A may deduct (subject to the limitations and conditions of sections 67, 162, and 274) the unreimbursed portion of his expenses for meals and entertainment ($62.50 ($250 − $187.50), and other employee business expenses ($187.50 ($750 − $562.50)).

*Example 3.* Assume the facts are the same as in example (1) except that the amount of the reimbursement is $500. Assume further that the facts and circumstances make clear that the reimbursement covers $100 of expenses for meals and that the remaining $400 of the reimbursement covers all types of deductible expenses (including any expenses for meals in excess of the $100 already designated) other than expenses for entertainment. The amount of the reimbursement that is allocated to A's business expenses for meals and entertainment is $125. This amount is equal to the sum of the amount of the reimbursement that clearly applies to meals ($100) and the amount of the reimbursement with respect to which the facts are unclear that is allocated to meals ($25). The latter amount is determined by multiplying the total amount of A's business expenses for meals and entertainment with respect to which the facts are unclear ($50) by the ratio of A's total reimbursement with respect to which the facts are unclear to A's total business expenses with respect to which the facts are unclear ($400/$800). The remaining amount of the reimbursement, $375 ($500 − $125) is allocated to A's business expenses other than meals and entertainment. Therefore, in determining his adjusted gross income under section 62, A may deduct $500 for reimbursed business expenses (including meals). In determining his taxable income under section 63, A may deduct (subject to the limitations and conditions of sections 67, 162, and 274) the unreimbursed portion of his expenses for meals ($25 ($150 − $125)), entertainment ($100), and other employee business expenses ($375 ($750 − $375)).

*Example 4.* During 1987 B, a research scientist, is employed by Corporation X. B gives a speech before members of Association Y, a professional organization of scientists, describing her most recent research findings. Pursuant to a reimbursement arrangement, Y reimburses B for the full amount of her travel fares to the site of the speech and for the full amount of her expenses for lodging and meals while there. B includes the amount of the reimbursement in her gross income. B may deduct the full amount of her travel expenses pursuant to section 62(a)(2)(A) in computing her adjusted gross income.

(f) [Reserved]

(g) *Moving expenses.* For taxable years beginning after December 31, 1986, a taxpayer described in section 217(a) shall not take into account the deduction described in section 217 relating to moving expenses in computing adjusted gross income under section 62 even if the taxpayer is reimbursed for his or her moving expenses. Such a taxpayer shall include the amount of any reimbursement for moving expenses in income pursuant to section 82. The deduction described in section 217 shall be taken into account in computing the taxable income of the taxpayer under section 63. Pursuant to section 67(b)(6), the 2-percent floor described in section 67(a) does not apply to moving expenses.

(h) *Cross-reference.* See 26 CFR 1.62–1 (Rev. as of April 1, 1986) with respect to pre-1987 deductions for travel, meal, lodging, transportation, and other trade or business expenses of an employee, reimbursed expenses of an employee, expenses of an outside salesperson, long-term capital gains, contributions described in section 405(c) to a bond purchase plan on behalf of a self-employed individual, moving expenses, amounts not received as benefits pursuant to section 1379(b)(3), and retirement bonds described in section 409 (allowed by section 219).

[T.D. 8189, 53 FR 9873, Mar. 28, 1988, as amended by T.D. 8276, 54 FR 51024, Dec. 12, 1989; T.D. 8324, 55 FR 51691, Dec. 17, 1990; T.D. 8451, 57 FR 57668, Dec. 7, 1992]

### § 1.62–2 Reimbursements and other expense allowance arrangements.

(a) *Table of contents.* The contents of this section are as follows:

(A) General rule.
(B) Per diem or mileage allowances.
(*1*) In general.
(*2*) Reimbursements.
(*3*) Advances.
(*4*) Special rules.
(ii) Nonaccountable plans.
(i) Application.
(j) Examples.
(k) Anti-abuse provision.
(l) Cross references.
(m) Effective dates.

(b) *Scope.* For purposes of determining "adjusted gross income," section 62(a)(2)(A) allows an employee a deduction for expenses allowed by part VI (section 161 and following), subchapter B, chapter 1 of the Code, paid by the employee, in connection with the performance of services as an employee of the employer, under a reimbursement or other expense allowance arrangement with a payor (the employer, its agent, or a third party). Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) if—

(1) Such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) Such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

This section prescribes rules relating to the requirements of section 62(c).

(c) *Reimbursement or other expense allowance arrangement*—(1) *Defined.* For purposes of §§ 1.62–1, 1.62–1T, and 1.62–2, the phrase "reimbursement or other expense allowance arrangement" means an arrangement that meets the requirements of paragraphs (d) (business connection, (e) (substantiation), and (f) (returning amounts in excess of expenses) of this section. A payor may have more than one arrangement with respect to a particular employee, depending on the facts and circumstances. See paragraph (d)(2) of this section (payor treated as having two arrangements under certain circumstances).

(2) *Accountable plans*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, if an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, all amounts paid under the arrangement are treated as paid under an "accountable plan."

(ii) *Special rule for failure to return excess.* If an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, but the employee fails to return, within a reasonable period of time, any amount in excess of the amount of the expenses substantiated in accordance with paragraph (e) of this section, only the amounts paid under the arrangement that are not in excess of the substantiated expenses are treated as paid under an accountable plan.

(3) *Nonaccountable plans*—(i) *In general.* If an arrangement does not satisfy one or more of the requirements of paragraphs (d), (e), or (f) of this section, all amounts paid under the arrangement are treated as paid under a "nonaccountable plan." If a payor provides a nonaccountable plan, an employee who receives payments under the plan cannot compel the payor to treat the payments as paid under an accountable plan by voluntarily substantiating the expenses and returning any excess to the payor.

(ii) *Special rule for failure to return excess.* If an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, but the employee fails to return, within a reasonable period of time, any amount in excess of the amount of the expenses substantiated in accordance with paragraph (e) of this section, the amounts paid under the arrangement that are in excess of the substantiated expenses are treated as paid under a nonaccountable plan.

(4) *Treatment of payments under accountable plans.* Amounts treated as paid under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), Railroad Retirement Tax Act (RRTA), Railroad Unemployment Repayment Tax

(RURT), and income tax.) See paragraph (l) of this section for cross references.

(5) *Treatment of payments under nonaccountable plans.* Amounts treated as paid under a nonaccountable plan are included in the employee's gross income, must be reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes (FICA, FUTA, RRTA, RURT, and income tax). See paragraph (h) of this section. Expenses attributable to amounts included in the employee's gross income may be deducted, provided the employee can substantiate the full amount of his or her expenses (*i.e.*, the amount of the expenses, if any, the reimbursement for which is treated as paid under an accountable plan as well as those for which the employee is claiming the deduction) in accordance with §§ 1.274–5T and 1.274(d)–1 or § 1.162–17, but only as a miscellaneous itemized deduction subject to the limitations applicable to such expenses (e.g., the 80-percent limitation on meal and entertainment expenses provided in section 274(n) and the 2-percent floor provided in section 67).

(d) *Business connection*—(1) *In general.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, an arrangement meets the requirements of this paragraph (d) if it provides advances, allowances (including per diem allowances, allowances only for meals and incidental expenses, and mileage allowances), or reimbursements only for business expenses that are allowable as deductions by part VI (section 161 and the following), subchapter B, chapter 1 of the Code, and that are paid or incurred by the employee in connection with the performance of services as an employee of the employer. The payment may be actually received from the employer, its agent, or a third party for whom the employee performs a service as an employee of the employer, and may include amounts charged directly or indirectly to the payor through credit card systems or otherwise. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(2) *Other bona fide expenses.* If an arrangement provides advances, allowances, or reimbursements for business expenses described in paragraph (d)(1) of this section (*i.e.*, deductible employee business expenses) and for other bona fide expenses related to the employer's business (e.g., travel that is not away from home) that are not deductible under part VI (section 161 and the following), subchapter B, chapter 1 of the Code, the payor is treated as maintaining two arrangements. The portion of the arrangement that provides payments for the deductible employee business expenses is treated as one arrangement that satisfies this paragraph (d). The portion of the arrangement that provides payments for the nondeductible employee expenses is treated as a second arrangement that does not satisfy this paragraph (d) and all amounts paid under this second arrangement will be treated as paid under a nonaccountable plan. See paragraphs (c)(5) and (h) of this section.

(3) *Reimbursement requirement*—(i) *In general.* If a payor arranges to pay an amount to an employee regardless of whether the employee incurs (or is reasonably expected to incur) business expenses of a type described in paragraph (d)(1) or (d)(2) of this section, the arrangement does not satisfy this paragraph (d) and all amounts paid under the arrangement are treated as paid under a nonaccountable plan. See paragraphs (c)(5) and (h) of this section.

(ii) *Per diem allowances.* An arrangement providing a per diem allowance for travel expenses of a type described in paragraph (d)(1) or (d)(2) of this section that is computed on a basis similar to that used in computing the employee's wages or other compensation (e.g., the number of hours worked, miles traveled, or pieces produced) meets the requirements of this paragraph (d) only if, on December 12, 1989, the per diem allowance was identified by the payor either by making a separate payment or by specifically identifying the amount of the per diem allowance, or a per diem allowance computed on that basis was commonly used in the industry in which the employee is employed. See section 274(d) and §1.274(d)–1. A per diem allowance described in this paragraph (d)(3)(ii) may be adjusted in a manner that reasonably reflects actual increases in employee business expenses occurring after December 12, 1989.

(e) *Substantiation*—(1) *In general.* An arrangement meets the requirements of this paragraph (e) if it requires each business expense to be substantiated to the payor in accordance with paragraph (e)(2) or (e)(3) of this section, whichever is applicable, within a reasonable period of time. See §1.274–5T or §1.162–17.

(2) *Expenses governed by section 274(d).* An arrangement that reimburses travel, entertainment, use of a passenger automobile or other listed property, or other business expenses governed by section 274(d) meets the requirements of this paragraph (e)(2) if information sufficient to satisfy the substantiation requirements of section 274(d) and the regulations thereunder is submitted to the payor. See §1.274–5. Under section 274(d), information sufficient to substantiate the requisite elements of each expenditure or use must be submitted to the payor. For example, with respect to travel away from home, §1.274–5(b)(2) requires that information sufficient to substantiate the amount, time, place, and business purpose of the expense must be submitted to the payor. Similarly, with respect to use of a passenger automobile or other listed property, §1.274–5(b)(6) requires that information sufficient to substantiate the amount, time, use, and business purpose of the expense must be submitted to the payor. *See* §1.274–5(g) and (j), which grant the Commissioner the authority to establish optional methods of substantiating certain expenses. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by §1.274–5(g) or (j) will be treated as substantiation of the amount of such expense for purposes of this section.

(3) *Expenses not governed by section 274(d).* An arrangement that reimburses business expenses not governed by section 274(d) meets the requirements of this paragraph (e)(3) if information is submitted to the payor sufficient to enable the payor to identify the specific nature of each expense and to conclude that the expense is attributable to the payor's business activities. Therefore, each of the elements of an expenditure or use must be substantiated to the payor. It is not sufficient if an employee merely aggregates expenses into broad categories (such as ''travel'') or reports individual expenses through the use of vague, nondescriptive terms (such as ''miscellaneous business expenses''). See §1.162–17(b).

(f) *Returning amounts in excess of expenses—(1) In general.* Except as provided in paragraph (f)(2) of this section, an arrangement meets the requirements of this paragraph (f) if it requires the employee to return to the payor within a reasonable period of time may amount paid under the arrangement in excess of the expenses substantiated in accordance with paragraph (e) of this section. The determination of whether an arrangement requires an employee to return amounts in excess of substantiated expenses will depend on the facts and circumstances. An arrangement whereby money is advanced to an employee to defray expenses will be treated as satisfying the requirements of this paragraph (f) only if the amount of money advanced is reasonably calculated not to exceed the amount of anticipated expenditures, the advance of money is made on a day within a reasonable period of the day that the anticipated expenditures are paid or incurred, and any amounts in excess of the expenses substantiated in accordance with paragraph (e) of this section are required to be returned to the payor within a reasonable period of time after the advance is received.

(2) *Per diem or mileage allowances.* The Commissioner may, in his discretion, prescribe rules in pronouncements of general applicability under which a reimbursement or other expense allowance arrangement that provides per diem allowances providing for ordinary and necessary expenses of traveling away from home (exclusive of transportation costs to and from destination) or mileage allowances providing for ordinary and necessary expenses of local

travel and tranportation while traveling away from home will be treated as satisfying the requirements of this paragraph (f), even though the arrangement does not require the employee to return the portion of such an allowance that relates to the days or miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated pursuant to rules prescribed under section 274(d), provided the allowance is paid at a rate for each day or mile of travel that is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return to the payor within a reasonable period of time any portion of such allowance which relates to days or miles of travel not substantiated in accordance with paragraph (e) of this section.

(g) *Reasonable period*—(1) *In general.* The determination of a reasonable period of time will depend on the facts and circumstances.

(2) *Safe harbors*—(i) *Fixed date method.* An advance made within 30 days of when an expense is paid or incurred, an expense substantiated to the payor within 60 days after it is paid or incurred, or an amount returned to the payor within 120 days after an expense is paid or incurred will be treated as having occurred within a reasonable period of time.

(ii) *Periodic statement method.* If a payor provides employees with periodic statements (no less frequently than quarterly) stating the amount, if any, paid under the arrangement in excess of the expenses the employee has substantiated in accordance with paragraph (e) of this section, and requesting the employee to substantiate any additional business expenses that have not yet been substantiated (whether or not such expenses relate to the expenses with respect to which the original advance was paid) and/or to return any amounts remaining unsubstantiated within 120 days of the statement, an expense substantiated or an amount returned within that period will be treated as being substantiated or returned within a reasonable period of time.

(3) *Pattern of overreimbursements.* If, under a reimbursement or other expense allowance arrangement, a payor has a plan or practice to provide amounts to employees in excess of expenses substantiated in accordance with paragraph (e) of this section and to avoid reporting and withholding on such amounts, the payor may not use either of the safe harbors provided in paragraph (g)(2) of this section for any years during which such plan or practice exists.

(h) *Withholding and payment of employment taxes*—(1) *When excluded from wages.* If an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, the amounts paid under the arrangement that are not in excess of the expenses substantiated in accordance with paragraph (e) of this section (*i.e.*, the amounts treated as paid under an accountable plan) are not wages and are not subject to withholding and payment of employment taxes. If an arrangement provides advances, allowances, or reimbursements for meal and entertainment expenses and a portion of the payment is treated as paid under a nonaccountable plan under paragraph (d)(2) of this section due solely to section 274(n), then notwithstanding paragraph (h)(2)(ii) of this section, these nondeductible amounts are neither treated as gross income nor subject to withholding and payment of employment taxes.

(2) *When included in wages*—(i) *Accountable plans*—(A) *General rule.* Except as provided in paragraph (h)(2)(i)(B) of this section, if the expenses covered under an arrangement that meets the requirements of paragraphs (d), (e), and (f) of this section are not substantiated to the payor in accordance with paragraph (e) of this section within a reasonable period of time or if any amounts in excess of the substantiated expenses are not returned to the payor in accordance with paragraph (f) of this section within a reasonable period of time, the amount which is treated as paid under a nonaccountable plan under paragraph (c)(3)(ii) of this section is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. A payor may treat any amount not substantiated or returned

within the periods specified in paragraph (g)(2) of this section as not substantiated or returned within a reasonable period of time.

(B) *Per diem or mileage allowances*—(*1*) *In general*. If a payor pays a per diem or mileage allowance under an arrangement that meets the requirements of the paragraphs (d), (e), and (f) of this section, the portion, if any, of the allowance paid that relates to days or miles of travel substantiated in accordance with paragraph (e) of this section and that exceeds the amount of the employee's expenses deemed substantiated for such travel pursuant to rules prescribed under section 274(d) and §1.274(d)–1 or §1.274–5T(j) is treated as paid under a nonaccountable plan. See paragraph (c)(3)(ii) of this section. Because the employee is not required to return this excess portion, the reasonable period of time provisions of paragraph (g) of this section (relating to the return of excess amounts) do not apply to this excess portion.

(*2*) *Reimbursements*. Except as provided in paragraph (h)(2)(i)(B)(*4*) of this section, in the case of a per diem or mileage allowance paid as a reimbursement at a rate for each day or mile of travel that exceeds the amounts of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion described in paragraph (h)(2)(i) of this section is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the days or miles of travel substantiated in accordance with paragraph (e) of this section.

(*3*) *Advances*. Except as provided in paragraph (h)(2)(i)(B)(*4*) of this section, in the case of a per diem or mileage allowance paid as an advance at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion described in paragraph (h)(2)(i) of this section is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (*i.e.*, the days or miles of travel) are substantiated in accordance with paragraph (e) of this section. The expenses with respect to which the advance was paid must be substantiated within a reasonable period of time. See paragraph (g) of this section.

(*4*) *Special rules*. The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(ii) *Nonaccountable plans*. If an arrangement does not satisfy one or more of the requirements of paragraphs (d), (e), or (f) of this section, all amounts paid under the arrangement are wages and are subject to withholding and payment of employment taxes when paid.

(i) *Application*. The requirements of paragraphs (d) (business connection), (e) (substantiation), and (f) (returning amounts in excess of expenses) of this section will be applied on an employee-by-employee basis. Thus, for example, the failure by one employee to substantiate expenses under an arrangement in accordance with paragraph (e) of this section will not cause amounts paid to other employees to be treated as paid under a nonaccountable plan.

(j) *Examples*. The rules contained in this section may be illustrated by the following examples:

*Example 1 Reimbursement requirement*. Employer S pays its engineers $200 a day. On those days that an engineer travels away from home on business for Employer S, Employer S designates $50 of the $200 as paid to reimburse the engineer's travel expenses. Because Employer S would pay an engineer $200 a day regardless of whether the engineer was traveling away from home, the arrangement does not satisfy the reimbursement requirement of paragraph (d)(3)(i) of this section. Thus, no part of the $50 Employer S designated as a reimbursement is treated as paid under an accountable plan. Rather, all payments under the arrangement are treated as paid under a nonaccountable plan. Employer S must report the entire $200 as wages or other compensation on the employees' Forms W-2 and must withhold and pay employment taxes on the entire $200 when paid.

*Example 2 Reimbursement requirement, multiple arrangements*. Airline T pays all its employees a salary. Airline T also pays an allowance under an arrangement that otherwise meets the requirements of paragraphs (d), (e), and (f) of this section to its pilots and flight attendants who travel away from their home base airports, whether or not they are ''away from home.'' Because the allowance is paid only to those employees who incur (or are reasonably expected to incur) expenses of a type described in paragraph (d)(1) or (d)(2) of this section, the arrangement satisfies the reimbursement requirement of paragraph (d)(3)(i) of this section. Under paragraph (d)(2) of this section, Airline T is treated as maintaining two arrangements. The portion of the arrangement providing the allowances for away from home travel is treated as an accountable plan. The portion of the arrangement providing the allowances for non-away from home travel is treated as a nonaccountable plan. Airline T must report the non-away from home allowances as wages or other compensation on the employees' Forms W-2 and must withhold and pay employment taxes on these payments when paid.

*Example 3. Reimbursement requirement.* Corporation R pays all its salespersons a salary. Corporation R also pays a travel allowance under an arrangement that otherwise meets the requirements of paragraphs (d), (e), and (f) of this section. This allowance is paid to all salespersons, including salespersons that Corporation R knows, or has reason to know, do not travel away from their offices on Corporation R business and would not be reasonably expected to incur travel expenses. Because the allowance is not paid only to those employees who incur (or are reasonably expected to incur) expenses of a type described in paragraph (d)(1) or (d)(2) of this section, the arrangement does not satisfy the reimbursement requirement of paragraph (d)(3)(i) of this section. Thus, no part of the allowance Corporation R designated as a reimbursement is treated as paid under an accountable plan. Rather, all payments under the arrangement are treated as paid under a nonaccountable plan. Corporation R must report all payments under the arrangement as wages or other compensation on the employees' Forms W-2 and must withhold and pay employment taxes on the payments when paid.

*Example 4 Separate arrangement, miscellaneous expenses.* Under an arrangement that meets the requirements of paragraphs (d), (e), and (f) of this section, County U reimburses its employees for lodging and meal expenses incurred when they travel away from home on County U business. For its own convenience, County U also separately pays certain of its employees a $25 monthly allowance to cover the cost of small miscellaneous office expenses. County U does not require its employees to substantiate these miscellaneous expenses and does not require them to return the amounts by which the monthly allowance exceeds the miscellaneous expenses. The monthly allowance arrangement is a nonaccountable plan. County U must report the monthly allowances as wages or other compensation on the employees' Forms W-2 and must withhold and pay employment taxes on the monthly allowances when paid. The nonaccountable plan providing the monthly allowances is treated as separate from the accountable plan providing reimbursements for lodging and meal expenses incurred for travel away from home on County U business.

*Example 5 Excessive advances.* In anticipation of employee business expenses that Corporation V does not reasonably expect to exceed $400 in any quarter, Corporation V nonetheless advances $1,000 to Employee A for such expenses. Whenever Employee A substantiates an expense in accordance with paragraph (e) of this section, Corporation V provides an additional advance in an amount equal to the amount substantiated, thereby providing a continuing advance of $1,000. Because the amounts advanced under this arrangement are not reasonably calculated so as not to exceed the amount of anticipated expenditures and because the advance of money is not made on a day within a reasonable period of the day that the anticipated expenditures are paid or incurred, the arrangement is a nonaccountable plan. The arrangement fails to satisfy the requirements of paragraphs (d) (business connection) and (f) (reasonable calculation of advances) of this section. Thus, Corporation V must report the entire amount of each advance as wages or other compensation and must withhold and pay employment taxes on the entire amount of each advance when paid.

*Example 6 Excess mileage advance.* Under an arrangement that meets the requirements of paragraphs (d), (e), and (f) of this section, Employer W pays its employees a mileage allowance at a rate of 30 cents per mile (when the amount deemed substantiated for each mile of travel substantiated is 26 cents per mile) to cover automobile business expenses. The allowance is paid at a rate for each mile of travel that is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses. Employer W does not require the return of the portion of the mileage allowance (4 cents) that exceeds the amount deemed substantiated for each mile of travel substantiated in accordance with paragraph (e) of this section. In June, Employer W advances Employee B $150 for 500 miles to be traveled by Employee B during the month. In July, Employee B substantiates 500 miles of business travel. The amount deemed substantiated by Employee B is $130. However, Employer W does not require Employee B to return the remaining $20 of the advance. No later than the first payroll period following the payroll period in which the business miles of travel are substantiated, Employer W must withhold and pay employment taxes on $20 (500 miles × 4 cents per mile).

*Example 7 Excess per diem reimbursement.* Under an arrangement that meets the requirements of paragraphs (d), (e), and (f) of this section, Employer X pays its employees a per diem allowance to cover lodging, meal, and incidental expenses incurred for travel away from home on Employer X business at a rate equal to 120 percent of the amount deemed substantiated for each day of travel to the localities to which the employees travel. Employer X does not require the employees to return the 20 percent by which the reimbursement for those expenses exceeds the amount deemed substantiated for each day of travel substantiated in accordance with paragraph (e) of this section. Employee C substantiates six days of business travel away from home: Two days in a locality for which the amount deemed substantiated is $100 a day and four days in a locality for which the amount deemed substantiated is $125 a day. Employer X reimburses Employee C $840 for the six days of travel away from home (2×(120%×$100)+4×(120%×$125)), and does not require Employee C to return the excess portion ($140 excess portion = (2 days×$20 ($120−$100)+4 days×$25 ($150-$125)). For the payroll period in which Employer X reimburses the expenses, Employer X must withhold and pay employment taxes on $140.

*Example 8. Return Requirement.* Employer Y provides expense allowances to certain of its employees to cover business expenses of a type described in paragraph (d)(1) of this section under an arrangement that requires the employees to substantiate their expenses within a reasonable period of time and to return any excess amounts within a reasonable period of time. Each time an employee returns an excess amount to Employer Y, however, Employer Y pays the employee a ''bonus'' equal to the amount returned by the employee. The arrangement fails to satisfy the requirements of paragraph (f) (returning amounts in excess of expenses) of this section. Thus, Employer Y must report the entire amount of the expense allowance payments as wages or other compensation and must withhold and pay employment taxes on the payments when paid. Compare example (6) (where the employee is not required to return the portion of the mileage allowance that exceeds the amount deemed substantiated for each mile of travel substantiated).

*Example 9 Timely substantiation.* Employer Z provides a $500 advance to Employee D for a trip away from home on Employer Z business. Employee D incurs $500 in business expenses on the trip. Employer Z uses the periodic statement method safe harbor. At the end of the quarter during which the trip occurred, Employer Z sends a quarterly statement to Employee D stating that $500 was advanced to Employee D during the quarter and that no expenses were substantiated and no excess amounts returned. The statement advises Employee D that Employee D must substantiate any additional business expenses within 120 days of the date of the statement, and must return any unsubstantiated excess within the 120-day period. Employee D fails to substantiate any expenses or to return the excess within the 120-day period. Employer Z treats the $500 as wages and withholds and pays employment taxes on the $500. After the 120-day period has expired, Employee D substantiates the $500 in travel expenses in accordance with paragraph (e) of this section. Employer Z properly reported and withheld and paid employment taxes on the $500 and no adjustments may be made. Employee D must include the $500 in gross income and may deduct the $500 of expenses as a miscellaneous itemized deduction subject to the 2-percent floor provided in section 67.

(k) *Anti-abuse provision.* If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of section 62(c) and this section, all payments made under the arrangement will be treated as made under a nonaccountable plan.

(l) *Cross references.* For employment tax regulations relating to reimbursement and expense allowance arrangements, see §§ 31.3121 (a)–3, 31.3231(e)–(3), 31.3306(b)–2, and 31.3401(a)–4, which generally apply to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990 with respect to expenses paid or incurred on or after July 1, 1990. For reporting requirements, see § 1.6041–3(i), which generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1989 with respect to expenses paid or incurred on or after January 1, 1989.

(m) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee in taxable years of the employee beginning on or after January 1, 1989, with respect to expenses paid or incurred in taxable years beginning on or after January 1, 1989. Paragraph (h) of this section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990 with respect to expenses paid or incurred on or after July 1, 1990. Paragraphs (d)(3)(ii) and (h)(2)(i)(B) of this section apply to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991 with respect to expenses paid or incurred on or after January 1, 1991. Paragraph (e)(2) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee with respect to expenses paid or incurred after December 31, 1997.

[T.D. 8324, 55 FR 51691, Dec. 17, 1990; 56 FR 8911, Mar. 4, 1991, as amended by T.D. 8451, 57 FR 57668, Dec. 7, 1992; T.D. 8666, 61 FR 27005, May 30, 1996; T.D. 8784, 63 FR 52600, Oct. 1, 1998; T.D. 8864, 65 FR 4122, Jan. 26, 2000; T.D. 9064, 68 FR 39011, July 1, 2003]

### § 1.63–1 Change of treatment with respect to the zero bracket amount and itemized deductions.

(a) *In general.* An individual who files a return on which the individual itemizes deductions in accordance with section 63(g) may later make a change of treatment by recomputing taxable income for the taxable year to which that return relates without itemizing deductions. Similarly, an individual who files a return on which the individual computes taxable income without itemizing deductions may later make a change of treatment by itemizing deductions in accordance with section 63(g) in recomputing taxable income for the taxable year to which that return relates.

(b) *No extension of time for claiming credit or refund.* A change of treatment described in paragraph (a) of this section does not extend the period of time prescribed in section 6511 within which the taxpayer may make a claim for credit or refund of tax.

(c) *Special requirements if spouse filed separate return*—(1) *Requirements.* If the spouse of the taxpayer filed a separate return for a taxable year corresponding to the taxable year of the taxpayer, the taxpayer may not make a change of treatment described in paragraph (a) of this section for that year unless—

(i) The spouse makes a change of treatment on the separate return consistent with the change of treatment sought by the taxpayer; and

(ii) The taxpayer and the taxpayer's spouse file a consent in writing to the assessment of any deficiency of either spouse to the extent attributable to the change of treatment, even though the assessment of the deficiency would otherwise be prevented by the operation of any law or rule of law. The consent must be filed with the district director for the district in which the taxpayer applies for the change of treatment, and the period during which a deficiency may be assessed shall be established by agreement of the spouses and the district director.

(2) *Corresponding taxable year.* A taxable year of one spouse corresponds to a taxable year of the other spouse if both taxable years end in the same calendar year. If the taxable year of one spouse ends with death, however, the corresponding taxable year of the surviving spouse is that in which the death occurs.

(d) *Inapplicable if tax liability has been compromised.* The taxpayer may not make a change of treatment described in paragraph (a) of this section for any taxable year if—

(1) The tax liability of the taxpayer for the taxable year has been compromised under section 7122; or

(2) The tax liability of the taxpayer's spouse for a taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122. See paragraph (c)(2) of this section for the determination of a corresponding taxable year.

(e) *Effective date.* This section applies to taxable years beginning after 1976.

[T.D. 7585, 44 FR 1105, Jan. 4, 1979]

### § 1.63–2 Cross reference.

For rules with respect to charitable contribution deductions for nonitemizing taxpayers, see section 63 (b)(1)(C) and (i) and section 170(i) of the Internal Revenue Code of 1954.

(Secs. 170(a)(1) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 58, 26 U.S.C. 170(a)(1); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 8002, 49 FR 50666, Dec. 31, 1984]

### § 1.66–1 Treatment of community income.

(a) *In general.* Married individuals domiciled in a community property state who do not elect to file a joint individual Federal income tax return under section 6013 generally must report half of the total community income earned by the spouses during the taxable year except at times when one of the following exceptions applies:

(1) The spouses live apart and meet the qualifications of §1.66–2.

(2) The Secretary denies a spouse the Federal income tax benefits resulting from community property law under §1.66–3, because that spouse acted as if solely entitled to the income and failed to notify his or her spouse of the nature and amount of the income prior to the due date for the filing of his or her spouse's return.

(3) A requesting spouse qualifies for traditional relief from the Federal income tax liability resulting from the operation of community property law under §1.66–4(a).

(4) A requesting spouse qualifies for equitable relief from the Federal income tax liability resulting from the operation of community property law under §1.66–4(b).

(b) *Applicability*. (1) The rules of this section apply only to community income, as defined by state law. The rules of this section do not apply to income that is not community income. Thus, the rules of this section do not apply to income from property that was formerly community property, but in accordance with state law, has ceased to be community property, becoming, e.g., separate property or property held by joint tenancy or tenancy in common.

(2) When taxpayers report income under paragraph (a) of this section, *all* community income for the calendar year is treated in accordance with the rules provided by section 879(a). Unlike the other provisions under section 66, section 66(a) does not permit inclusion on an item-by-item basis.

(c) *Transferee liability*. The provisions of section 66 do not negate liability that arises under the operation of other laws. Therefore, a spouse who is not subject to Federal income tax on community income may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws (other than community property laws). For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder.

[T.D. 9074, 68 FR 41070, July 10, 2003]

### § 1.66–2 Treatment of community income where spouses live apart.

(a) Community income of spouses domiciled in a community property state will be treated in accordance with the rules provided by section 879(a) if all of the following requirements are satisfied—

(1) The spouses are married to each other at any time during the calendar year;

(2) The spouses live apart at all times during the calendar year;

(3) The spouses do not file a joint return with each other for a taxable year beginning or ending in the calendar year;

(4) One or both spouses have earned income that is community income for the calendar year; and

(5) No portion of such earned income is transferred (directly or indirectly) between such spouses before the close of the calendar year.

(b) *Living apart*. For purposes of this section, living apart requires that spouses maintain separate residences. Spouses who maintain separate residences due to temporary absences are not considered to be living apart. Spouses who are not members of the same household under §1.6015–3(b) are considered to be living apart for purposes of this section.

(c) *Transferred income*. For purposes of this section, transferred income does not include a *de minimis* amount of earned income that is transferred between the spouses. In addition, any amount of earned income transferred for the benefit of the spouses' child will not be treated as an indirect transfer to one spouse. Additionally, income transferred between spouses is presumed to be a transfer of earned income. This presumption is rebuttable.

(d) *Examples*. The following examples illustrate the rules of this section:

*Example 1 Living apart*. H and W are married, domiciled in State A, a community property state, and have lived apart the entire year of 2002. W, who is in the Army, was stationed in Korea for the entire calendar year. During their separation, W intended to return home to H, and H intended to live with W upon W's return. H and W do not file a joint return for taxable year 2002. H and W may not report their income under this section because a temporary absence due to military service is not living apart as contemplated under this section.

*Example 2 Transfer of earned income—de minimis exception.* H and W are married, domiciled in State B, a community property state, and have lived apart the entire year of 2002. H and W are estranged and intend to live apart indefinitely. H and W do not file a joint return for taxable year 2002. H occasionally visits W and their two children, who live with W. When H visits, he often buys gifts for the children, takes the children out to dinner, and occasionally buys groceries or gives W money to buy the children new clothes for school. Both W and H have earned income in the year 2002 that is community income under the laws of State B. H and W may report their income on separate returns under this section.

*Example 3 Transfer of earned income—source of transfer.* H and W are married, domiciled in State C, a community property state, and have lived apart the entire year of 2002. H and W are estranged and intend to live apart indefinitely. H and W do not file a joint return for taxable year 2002. W provides H $1,000 a month from March 2002 through August 2002 while H is working part-time and seeking full-time employment. W is not legally obligated to make the $1,000 payments. W earns $75,000 in 2002 in wage income. W also receives $10,000 in capital gains income in December 2002. H wants to report his income in accordance with this section, alleging that the $6,000 that he received from W was not from W's earned income, but from the capital gains income W received in 2002. The facts and circumstances surrounding the periodic payments to H from W do not indicate that W made the payments out of her capital gains. H and W may not report their income in accordance with this section, as the $6,000 W transferred to H is presumed to be from W's earned income, and H has not presented any facts to rebut the presumption.

[T.D. 9074, 68 FR 41070, July 10, 2003]

## § 1.66–3 Denial of the Federal income tax benefits resulting from the operation of community property law where spouse not notified.

(a) *In general.* The Secretary may deny the Federal income tax benefits of community property law to any spouse with respect to any item of community income if that spouse acted as if solely entitled to the income and failed to notify his or her spouse of the nature and amount of the income before the due date (including extensions) for the filing of the return of his or her spouse for the taxable year in which the item of income was derived. Whether a spouse has acted as if solely entitled to the item of income is a facts and circumstances determination. This determination focuses on whether the spouse used, or made available, the item of income for the benefit of the marital community.

(b) *Effect.* The item of community income will be included, in its entirety, in the gross income of the spouse to whom the Secretary denied the Federal income tax benefits resulting from community property law. The tax liability arising from the inclusion of the item of community income must be assessed in accordance with section 6212 against this spouse.

(c) *Examples.* The following examples illustrate the rules of this section:

*Example 1 Acting as if solely entitled to income.* (i) H and W are married and are domiciled in State A, a community property state. W's Form W-2 for taxable year 2000 showed wage income of $35,000. W also received a Form 1099–INT, ''Interest Income,'' showing $1,000 W received in taxable year 2000. W's wage income was directly deposited into H and W's joint account, from which H and W paid bills and household expenses. W did not inform H of her interest income or the Form 1099–INT, but W gave H a copy of the W-2 when she received it in January 2001. W did not use her interest income for bills or household expenses. Instead W gave her interest income to her brother, who was unemployed. Neither the separate return filed by H nor the separate return filed by W included the interest income. In 2002, the IRS audits both H and W. The Internal Revenue Service (IRS) may raise section 66(b) as to W's interest income, denying W the Federal income tax benefit resulting from community property law as to this item of income.

(ii) H and W are married and are domiciled in State B, a community property state. For taxable year 2000, H receives $45,000 in wage income that H places in a separate account. H and W maintain separate residences. H's wage income is community income under the laws of State B. That same year, W loses her job, and H pays W's mortgage and household expenses for several months while W seeks employment. Neither H nor W files a return for 2000, the taxable year for which the IRS subsequently audits them. The IRS may not raise section 66(b) and deny H the Federal income tax benefits resulting from the operation of community property law as to H's wage income of $45,000, as H has not treated this income as if H were solely entitled to it.

*Example 2 Notification of nature and amount of the income.* H and W are married and domiciled in State C, a community property state. H and W do not file a joint return for taxable year 2001. H's and W's earned income for 2001 is community income under the laws of State C. H receives $50,000 in wage income in 2001. In January 2002, H receives a Form W-2 that erroneously states that H earned $45,000 in taxable year 2001. H provides W a copy of H's Form W-2 in February 2002. W files for an extension prior to April 15, 2002. H receives a corrected Form W-2 reflecting wages of $50,000 in May 2002. H provides a copy of the corrected Form W-2 to W in May 2002. W files a separate return in June 2002, but reports one half of $45,000 ($22,500) of wage income that H earned. H files a separate return reporting half of $50,000 ($25,000) in wage income. The IRS audits both H and W. Even if H had acted as if solely entitled to the wage income, the IRS may not raise section 66(b) as to this income because H notified W of the nature and amount of the income prior to the due date of W's return (including extensions).

[T.D. 9074, 68 FR 41070, July 10, 2003]

### § 1.66–4 Request for relief from the Federal income tax liability resulting from the operation of community property law.

(a) *Traditional relief*—(1) *In general.* A requesting spouse will receive relief from the Federal income tax liability resulting from the operation of community property law for an item of community income if—

(i) The requesting spouse did not file a joint Federal income tax return for the taxable year for which he or she seeks relief;

(ii) The requesting spouse did not include in gross income for the taxable year an item of community income properly includible therein, which, under the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse;

(iii) The requesting spouse establishes that he or she did not know of, and had no reason to know of, the item of community income; and

(iv) Taking into account all of the facts and circumstances, it is inequitable to include the item of community income in the requesting spouse's individual gross income.

(2) *Knowledge or reason to know.* (i) A requesting spouse had knowledge or reason to know of an item of community income if he or she either actually knew of the item of community income, or if a reasonable person in similar circumstances would have known of the item of community income. All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an item of community income. The relevant facts and circumstances include, but are not limited to, the nature of the item of community income, the amount of the item of community income relative to other income items, the couple's financial situation, the requesting spouse's educational background and business experience, and whether the item of community income was reflected on prior years' returns (e.g., investment income omitted that was regularly reported on prior years' returns).

(ii) If the requesting spouse is aware of the source of community income or the income-producing activity, but is unaware of the specific amount of the nonrequesting spouse's community income, the requesting spouse is considered to have knowledge or reason to know of the item of community income. The requesting spouse's lack of knowledge of the specific amount of community income does not provide a basis for relief under this section.

(3) *Inequitable.* All of the facts and circumstances are considered in determining whether it is inequitable to hold a requesting spouse liable for a deficiency attributable to an item of community income. One relevant factor for this purpose is whether the requesting spouse benefitted, directly or indirectly, from the omitted item of community income. A benefit includes normal support, but does not include *de minimis* amounts. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers received several years after the filing of the return. Thus, for example, if a requesting spouse receives from the nonrequesting spouse property (including life insurance proceeds) that is traceable to items of community income attributable to the nonrequesting spouse, the requesting spouse will have benefitted

from those items of community income. Other factors may include, if the situation warrants, desertion, divorce or separation. Factors relevant to whether it would be inequitable to hold a requesting spouse liable, more specifically described under the applicable administrative procedure issued under section 66(c) (Revenue Procedure 2000–15 (2000–1 C.B. 447) (See § 601.601(d)(2) of this chapter), or other applicable guidance published by the Secretary), are to be considered in making a determination under this paragraph.

(b) *Equitable relief.* Equitable relief may be available when the four requirements of paragraph (a)(1) of this section are not satisfied, but it would be inequitable to hold the requesting spouse liable for the unpaid tax or deficiency. Factors relevant to whether it would be inequitable to hold a requesting spouse liable, more specifically described under the applicable administrative procedure issued under section 66(c) (Revenue Procedure 2000–15 (2000–1 C.B. 447), or other applicable guidance published by the Secretary), are to be considered in making a determination under this paragraph.

(c) *Applicability.* Traditional relief under paragraph (a) of this section applies only to deficiencies arising out of items of omitted income. Equitable relief under paragraph (b) of this section applies to any deficiency or any unpaid tax (or any portion of either). Equitable relief is available only for the portion of liabilities that were unpaid as of July 22, 1998, and for liabilities that arise after July 22, 1998.

(d) *Effect of relief.* When the requesting spouse qualifies for relief under paragraph (a) or (b) of this section, the IRS must assess any deficiency of the nonrequesting spouse arising from the granting of relief to the requesting spouse in accordance with section 6212.

(e) *Examples.* The following examples illustrate the rules of this section:

*Example 1 Item-by-item approach.* H and W are married, living together, and domiciled in State A (a community property state). H and W file separate returns for taxable year 2002 on April 15, 2003. H earns $56,000 in wages, and W earns $46,000 in wages, in 2002. H reports half of his wage income as shown on his Form W-2, in the amount of $28,000, and half of W's wage income as shown on her Form W-2, in the amount of $23,000. W reports half of her wage income as shown on her W-2, in the amount of $23,000, and half of H's wage income as shown on his Form W-2, in the amount of $28,000. Neither H nor W reports W's income from her sole proprietorship of $34,000 or W's investment income of $5,000 for taxable year 2002. The Internal Revenue Service (IRS) proposes deficiencies with respect to H's and W's taxable year 2002 returns due to the omission of W's income from her sole proprietorship and investments. H timely requests relief under section 66(c). Because the IRS determines that H satisfies the four requirements of the traditional relief provision of section 66(c) with respect to W's omitted investment income, the IRS grants H's request for relief as to the omitted investment income. The IRS determines that H does not satisfy the four requirements of the traditional relief provision of section 66(c) as to W's sole proprietorship income. The IRS further determines that, under the equitable relief provision of section 66(c), it is not inequitable to hold H liable for the sole proprietorship income. Relief is applicable on an item-by-item basis. Thus, H is liable for the tax on half of his wage income in the amount of $28,000, half of W's wage income in the amount of $23,000, half of W's sole proprietorship income in the amount of $17,000, but none of W's investment income, for which H obtained relief under section 66(c). W is liable for the tax on half of H's wage income in the amount of $28,000, half of W's wage income in the amount of $23,000, half of W's sole proprietorship income in the amount of $17,000, and all of W's investment income in the amount of $5,000, because H obtained relief under section 66(c).

*Example 2 Benefit.* H and W are married, living together, and domiciled in State B (a community property state). Neither H nor W files a return for taxable year 2000. H earns $60,000 in 2000, which he deposits in a joint account. H and W pay the mortgage payment, household bills, and other family expenses out of the joint account. W earns $20,000 in 2000. W uses a portion of the $20,000 to make monthly loan payments on the family cars, but loses the remainder at the local racetrack. In 2002, the IRS audits H and W. H requests relief under section 66(c), stating that he did not know or have reason to know of W's additional income, as H travels extensively while W handles the family finances. Regardless of whether H had knowledge or reason to know of the source of W's income, H is not eligible for traditional relief under section 66(c) because H benefitted from W's income. H's benefit, the portion of W's income used to make monthly payments on the car loans, was more than a de minimis amount. While this benefit was not in excess of normal support, it is enough to preclude relief under the traditional relief provision of section 66(c). H may still qualify for equitable relief under section 66(c), depending on all of the facts and circumstances.

(f) *Fraudulent scheme.* If the Secretary establishes that a spouse transferred assets to his or her spouse as part of a fraudulent scheme, relief is not available under this section. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Secretary or another third party, such as a creditor, ex-spouse, or business partner.

(g) *Definitions*—(1) *Requesting spouse.* A requesting spouse is an individual who does not file a joint Federal income tax return with the nonrequesting spouse for the taxable year in question, and who requests relief from the Federal income tax liability resulting from the operation of community property law under this section for the portion of the liability arising from his or her share of community income for such taxable year.

(2) *Nonrequesting spouse.* A nonrequesting spouse is the individual to whom the requesting spouse was married and whose income or deduction gave rise to the tax liability from which the requesting spouse seeks relief in whole or in part.

(h) *Effect of prior closing agreement or offer in compromise.* A requesting spouse is not entitled to relief from the Federal income tax liability resulting from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into a closing agreement (other than an agreement pursuant to section 6224(c) relating to partnership items) with the Secretary that disposes of the same liability that is the subject of the request for relief. In addition, a requesting spouse is not entitled to relief from the Federal income tax liability resulting from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into an offer in compromise with the Secretary. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(i) [Reserved]

(j) *Time and manner for requesting relief*—(1) *Requesting relief.* To request relief from the Federal income tax liability resulting from the operation of community property law under this section, a requesting spouse must file, within the time period prescribed in paragraph (j)(2) of this section, Form 8857, ''Request for Innocent Spouse Relief'' (or other specified form), or other written request, signed under penalties of perjury, stating why relief is appropriate. The requesting spouse must include the nonrequesting spouse's name and taxpayer identification number in the written request. The requesting spouse must also comply with the Secretary's reasonable requests for information that will assist the Secretary in identifying and locating the nonrequesting spouse.

(2) *Time period for filing a request for relief*—(i) *Traditional relief.* The earliest time for submitting a request for relief from the Federal income tax liability resulting from the operation of community property law under paragraph (a) of this section, for an amount underreported on, or omitted from, the requesting spouse's separate return, is the date the requesting spouse receives notification of an audit or a letter or notice from the IRS stating that there may be an outstanding liability with regard to that year (as described in paragraph (j)(2)(iii) of this section). The latest time for requesting relief under paragraph (a) of this section is 6 months before the expiration of the period of limitations on assessment, including extensions, against the nonrequesting spouse for the taxable year that is the subject of the request for relief, unless the examination of the requesting spouse's return commences during that 6-month period. If the examination of the requesting spouse's return commences during that 6-month period, the latest time for requesting relief under paragraph (a) of this section is 30 days after the commencement of the examination.

(ii) *Equitable relief.* The earliest time for submitting a request for relief from the Federal income tax liability resulting from the operation of community property law under paragraph (b) of this section is the date the requesting spouse receives notification of an audit or a letter or notice from the IRS stating that there may be an outstanding liability with regard to that year (as described in paragraph (j)(2)(iii) of this section). A request for equitable relief from the Federal income tax liability resulting from the operation of community property law under paragraph (b) of this section for a liability that is properly reported but unpaid is properly submitted with the requesting spouse's individual Federal income tax return, or after the requesting spouse's individual Federal income tax return is filed.

(iii) *Premature requests for relief.* The Secretary will not consider a premature request for relief under this section. The notices or letters referenced in this paragraph (j)(2) do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings. These notices or letters include notices of computational adjustment to a partner or partner's spouse (Notice of Income Tax Examination Changes) that reflect a computation of the liability attributable to partnership items of the partner or the partner's spouse.

(k) *Nonrequesting spouse's notice and opportunity to participate in administrative proceedings*—(1) *In general.* When the Secretary receives a request for relief from the Federal income tax liability resulting from the operation of community property law under this section, the Secretary must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's request for relief. The notice must provide the nonrequesting spouse with an opportunity to submit any information for consideration in determining whether to grant the requesting spouse relief from the Federal income tax liability resulting from the operation of community property law. The Secretary will share with each spouse the information submitted by the other spouse, unless the Secretary determines that the sharing of this information will impair tax administration.

(2) *Information submitted.* The Secretary will consider all of the information (as relevant to the particular relief provision) that the nonrequesting spouse submits in determining whether to grant relief from the Federal income tax liability resulting from the operation of community property law under this section.

[T.D. 9074, 68 FR 41070, July 10, 2003]

### § 1.66–5 Effective date.

Sections 1.66–1 through 1.66–4 are applicable on July 10, 2003. In addition, § 1.66–4 applies to any request for relief filed prior to July 10, 2003, for which the Internal Revenue Service has not issued a preliminary determination as of July 10, 2003.

[T.D. 9074, 68 FR 41070, July 10, 2003]

### § 1.67–1T 2-percent floor on miscellaneous itemized deductions (temporary).

(a) *Type of expenses subject to the floor*—(1) *In general.* With respect to individuals, section 67 disallows deductions for miscellaneous itemized deductions (as defined in paragraph (b) of this section) in computing taxable income (*i.e.*, so-called ''below-the-line'' deductions) to the extent that such otherwise allowable deductions do not exceed 2 percent of the individual's adjusted gross income (as defined in section 62 and the regulations thereunder). Examples of expenses that, if otherwise deductible, are subject to the 2-percent floor include but are not limited to—

(i) Unreimbursed employee expenses, such as expenses for transportation, travel fares and lodging while away from home, business meals and entertainment, continuing education courses, subscriptions to professional journals, union or professional dues, professional uniforms, job hunting, and the business use of the employee's home.

(ii) Expenses for the production or collection of income for which a deduction is otherwise allowable under section 212 (1) and (2), such as investment advisory fees, subscriptions to investment advisory publications, certain attorneys' fees, and the cost of safe deposit boxes,

(iii) Expenses for the determination of any tax for which a deduction is otherwise allowable under section 212(3), such as tax counsel fees and appraisal fees, and

(iv) Expenses for an activity for which a deduction is otherwise allowable under section 183.

See section 62 with respect to deductions that are allowable in computing adjusted gross income (*i.e.*, so-called ''above-the-line'' deductions).

(2) *Other limitations.* Except as otherwise provided in paragraph (d) of this section, to the extent that any limitation or restriction is placed on the amount of a miscellaneous itemized deduction, that limitation shall apply prior to the application of the 2-percent floor. For example, in the case of an expense for food or beverages, only 80 percent of which is allowable as a deduction because of the limitations provided in section 274(n), the otherwise deductible 80 percent of the expense is treated as a miscellaneous itemized deduction and is subject to the 2-percent limitation of section 67.

(b) *Definition of miscellaneous itemized deductions.* For purposes of this section, the term ''miscellaneous itemized deductions'' means the deductions allowable from adjusted gross income in determining taxable income, as defined in section 63, other than—

(1) The standard deduction as defined in section 63(c),

(2) Any deduction allowable for impairment-related work expenses as defined in section 67(d),

(3) The deduction under section 72(b)(3) (relating to deductions if annuity payments cease before the investment is recovered),

(4) The deductions allowable under section 151 for personal exemptions,

(5) The deduction under section 163 (relating to interest),

(6) The deduction under section 164 (relating to taxes),

(7) The deduction under section 165(a) for losses described in subsection (c)(3) or (d) of section 165,

(8) The deduction under section 170 (relating to charitable contributions and gifts),

(9) The deduction under section 171 (relating to deductions for amortizable bond premiums),

(10) The deduction under section 213 (relating to medical and dental expenses),

(11) The deduction under section 216 (relating to deductions in connection with cooperative housing corporations),

(12) The deduction under section 217 (relating to moving expenses),

(13) The deduction under section 691(c) (relating to the deduction for estate taxes in the case of income in respect of the decedent),

(14) The deduction under 1341 (relating to the computation of tax if a taxpayer restores a substantial amount held under claim of right), and

(15) Any deduction allowable in connection with personal property used in a short sale.

(c) *Allocation of expenses.* If a taxpayer incurs expenses that relate to both a trade or business activity (within the meaning of section 162) and a production of income or tax preparation activity (within the meaning of section 212), the taxpayer shall allocate such expenses between the activities on a reasonable basis.

(d) *Members of Congress*—(1) *In general.* With respect to the deduction for living expenses of Members of Congress referred to in section 162(a), the 2-percent floor described in section 67 and paragraph (a) of this section shall be applied to the deduction before the application of the $3,000 limitation on deductions for living expenses referred to in section 162(a). (For purposes of this paragraph (d), the term ''Member(s) of Congress'' includes any Delegate or Resident Commissioner.) The amount of miscellaneous itemized deductions of a Member of Congress that is disallowed pursuant to section 67 and paragraph (a) of this section shall be allocated between deductions for living expenses (within the meaning of section 162(a)) and other miscellaneous itemized deductions. The amount of deductions for living expenses of a Member of Congress that is disallowed pursuant to section 67 and paragraph (a) of this section is determined by multiplying the aggregate amount of such living expenses (determined without regard to the $3,000 limitation of section 162(a) but with regard to any other limitations) by a fraction, the numerator of which is the aggregate amount disallowed pursuant to section 67 and paragraph (a) of this section with respect to miscellaneous itemized deductions of the Member of Congress and the denominator of which is the amount of miscellaneous itemized deductions (including deductions for living expenses) of the Member of Congress (determined without regard to the $3,000 limitation of section 162(a) but without regard to any other limitations). The amount of deductions for miscellaneous itemized deductions (other than deductions for living expenses) of a Member of Congress that are disallowed pursuant to section 67 and paragraph (a) of this section is determined by multiplying the amount of miscellaneous itemized deductions (other than deductions for living expenses) of the Member of Congress (determined with regard to any limitations) by the fraction described in the preceding sentence.

(2) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

*Example.* For 1987 A, a Member of Congress, has adjusted gross income of $100,000, and miscellaneous itemized deductions of $10,750 of which $3,750 is for meals, $3,000 is for other living expenses, and $4,000 is for other miscellaneous itemized deductions (none of which is subject to any percentage limitations other than the 2-percent floor of section 67). The amount of A's business meal expenses that are disallowed under section 274(n) is $750 ($3,750×20%). The amount of A's miscellaneous itemized deductions that are disallowed under section 67 is $2,000 ($100,000×2%). The portion of the amount disallowed under section 67 that is allocated to A's living expenses is $1,200. This portion is equal to the amount of A's deductions for living expenses allowable after the application of section 274(n) and before the application of section 67 ($6,000) multiplied by the ratio of A's total miscellaneous itemized deductions disallowed under section 67 to A's total miscellaneous itemized deductions, determined without regard to the $3,000 limitation of section 162(a) ($2,000/$10,000). Thus, after application of section 274(n) and section 67, A's deduction for living expenses is $4,800 ($6,750 − $750 − $1,200). However, pursuant to section 162(a), A may deduct only $3,000 of such expenses. The amount of A's other miscellaneous itemized deductions that are disallowed under section 67 is $800 ($4,000×$2,000/$10,000). Thus, $3,200 ($4,000 − $800) of A's miscellaneous itemized deductions (other than deductions for living expenses) are allowable after application of section 67. A's total allowable miscellaneous itemized deductions are $6,200 ($3,000+$3,200).

(e) *State legislators.* See §1.62–1T(e)(4) with respect to rules regarding state legislator's expenses.

[T.D. 8189, 53 FR 9875, Mar. 28, 1988]

### § 1.67–2T Treatment of pass-through entities (temporary).

(a) *Application of section 67.* This section provides rules for the application of section 67 to partners, shareholders, beneficiaries, participants, and others with respect to their interests in pass-through entities (as defined in paragraph (g) of this section). In general, an affected investor (as defined in paragraph (h) of this section) in a pass-through entity shall separately take into account as an item of income and as an item of expense an amount equal to his or her allocable share of the affected expenses (as defined in paragraph (i) of this section) of the pass-through entity for purposes of determining his or her taxable income. Except as provided in paragraph (e)(1)(ii)(B) of this section, the expenses so taken into account shall be treated as paid or incurred by the affected investor in the same manner as paid or incurred by the pass-through entity. For rules regarding the application of section 67 to affected investors in—

(1) Partnerships, S corporations, and grantor trusts, see paragraph (b) of this section,

(2) Real estate mortgage investment conduits, see paragraph (c) of this section,

(3) Common trust funds, see paragraph (d) of this section,

(4) Nonpublicly offered regulated investment companies, see paragraph (e) of this section, and

(5) Publicly offered regulated investment companies, see paragraph (p) of this section.

(b) *Partnerships, S corporations, and grantor trusts*—(1) *In general.* Pursuant to section 702(a) and 1366(a) of the Code and the regulations thereunder, each partner of a partnership or shareholder of an S corporation shall take into account separately his or her distributive or pro rata share of any items of deduction of such partnership or corporation that are defined as miscellaneous itemized deductions pursuant to section 67(b). The 2-percent limitation described in section 67 does not apply to the partnership or corporation with respect to such deductions, but such deductions shall be included in the deductions of the partner or shareholder to which that limitation applies. Similarly, the limitation applies to the grantor or other person treated as the owner of a grantor trust with respect to items that are paid or incurred by a grantor trust and are treated as miscellaneous itemized deductions of the grantor or other person pursuant to Subpart E, Part 1, Subchapter J, Chapter 1 of the Code, but not to the trust itself. The 2-percent limitation applies to amounts otherwise deductible in taxable years of partners, shareholders, or grantors beginning after December 31, 1986, regardless of the taxable year of the partnership, corporation, or trust.

(2) *Example.* The provisions of this paragraph (b) may be illustrated by the following example:

*Example.* P, a partnership, incurs $1,000 in expenses to which section 212 applies during its taxable year. A, an individual, is a partner in P. A's distributive share of the expenses to which section 212 applies is $20, determined without regard to the 2-percent limitation of section 67. Pursuant to section 702(a), A must take $20 of expenses to which section 212 applies into account in determining his income tax. Pursuant to section 67, in determining his taxable income A may deduct his miscellaneous itemized deductions (including his $20 distributive share of deductions from P) to the extent the total amount exceeds 2 percent of his adjusted gross income.

(c) *Real estate mortgage investment conduit.* See §1.67–3T for rules regarding the application of section 67 to holders of interests in REMICs.

(d) *Common trust funds*—(1) *In general.* For purposes of determining the taxable income of an affected investor that is a participant in a common trust fund—

(i) The ordinary taxable income and ordinary net loss of the common trust fund shall be computed under section 584(d)(2) without taking into account any affected expenses, and

(ii) Each affected investor shall be treated as having paid or incurred an expense described in section 212 in an amount equal to the affected investor's proportionate share of the affected expenses. The 2-percent limitation described in section 67 applies to amounts otherwise deductible in taxable years of participants beginning after December 31, 1986, regardless of the taxable year of the common trust fund.

(2) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

*Example.* During 1987, the gross income and deductions of common trust fund C, a calendar year taxpayer, consist of the following items: (i) $50,000 of short-term capital gains; (ii) $150,000 of long-term capital gains; (iii) $1,000,000 of dividend income; (iv) $10,000 of deductions that are not affected expenses; and (v) $60,000 of deductions that are affected expenses. The proportionate share of Trust T in the income and losses of C is one percent. In computing its taxable income for 1987, T, a calendar year taxpayer, shall take into account the following items: (A) $500 of short-term capital gains (one percent of $50,000, C's short-term capital gains); (B) $1,500 of long-term capital gains (one percent of $150,000, C's long-term capital gains); (C) $9,900 of ordinary taxable income (one percent of $990,000, the excess of $100,000, C's gross income after excluding capital gains and losses, over $10,000, C's deductions that are not affected expenses); (D) $600 of expenses described in section 212 (one percent of $60,000, C's affected expenses).

(e) *Nonpublicly offered regulated investment companies*—(1) *In general.* For purposes of determining the taxable income of an affected investor that is a shareholder of a nonpublicly offered regulated investment company (as defined in paragraph (g)(3) of this section) during a calendar year—

(i) The current earnings and profits of the nonpublicly offered regulated investment company shall be computed without taking into account any affected RIC expenses that are allocated among affected investors, and

(ii) The affected investor shall be treated—

(A) As having received or accrued a dividend in an amount equal to the affected investor's allocable share of the affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year, and

(B) As having paid or incurred an expense described in section 212 (or section 162 in the case of an affected investor that is a nonpublicly offered regulated investment company) in an amount equal to the affected investor's allocable share of the affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year

in the affected investor's taxable year with which (or within which) the calendar year with respect to which the expenses are allocated ends. An affected investor's allocable share of the affected RIC expenses is the amount allocated to that affected investor pursuant to paragraph (k) of this section.

(2) *Shareholders that are not affected investors.* A shareholder of a nonpublicly offered regulated investment company that is not an affected investor shall not take into account in computing its taxable income any amount of income or expense with respect to its allocable share of affected RIC expenses.

(3) *Example.* The provisions of this paragraph (e) may be illustrated by the following example:

*Example.* During calendar year 1987, nonpublicly offered regulated investment company M distributes to individual shareholder A, a calendar year taxpayer, capital gain dividends of $1,000 and other dividends of $5,000. A's allocable share of the affected RIC expenses of M is $200. In computing A's taxable income for 1987, A shall take into account the following items: (i) $1,000 of long-term capital gains (the capital gain dividends received by A); (ii) $5,200 of dividend income (the sum of the other dividends received by A and A's allocable share of the affected RIC expenses of M); and (iii) $200 of expenses described in section 212 (A's allocable share of the affected RIC expenses of M). A is allowed a deduction for miscellaneous itemized deductions (including A's $200 allocable share of the affected RIC expenses of M, which is treated as an expense described in section 212) for 1987 only to the extent the aggregate of such deductions exceeds 2 percent of A's adjusted gross income for 1987.

(f) *Cross-reference.* See §1.67–1T with respect to limitations on deductions for expenses described in section 212 (including amounts treated as such expenses under this section).

(g) *Pass-through entity*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, for purposes of section 67(c) and this section, a pass-through entity is—

(i) A trust (or any portion thereof) to which Subpart E, Part 1, Subchapter J, Chapter 1 of the Code applies,

(ii) A partnership,

(iii) An S corporation,

(iv) A common trust fund described in section 584,

(v) A nonpublicly offered regulated investment company,

(vi) A real estate mortgage investment conduit, and

(vii) Any other person—

(A) Which is not subject to the income tax imposed by Subtitle A, Chapter 1, or which is allowed a deduction in computing such tax for distributions to owners or beneficiaries, and

(B) The character of the income of which may affect the character of the income recognized with respect to that person by its owners or beneficiaries.

Entities that do not meet the requirements of paragraph (g)(1)(vii) (A) and (B) of this section, such as qualified pension plans, individual retirement accounts, and insurance companies holding assets in separate asset accounts to fund variable contracts defined in section 817(d), are not described in this paragraph (g)(1).

(2) *Exception.* For purposes of section 67(c) and this section, a pass-through entity does not include:

(i) An estate;

(ii) A trust (or any portion thereof) not described in paragraph (g)(1)(i) of this section,

(iii) A cooperative described in section 1381(a)(2), determined without regard to subparagraphs (A) and (C) thereof, or

(iv) A real estate investment trust.

(3) *Nonpublicly offered regulated investment company—(i) In general.* For purposes of this section, the term ''nonpublicly offered regulated investment company'' means a regulated investment company to which Part I of Subchapter M of the Code applies that is not a publicly offered regulated investment company.

(ii) *Publicly offered regulated investment company.* For purposes of this section, the term ''publicly offered regulated investment company'' means a regulated investment company to which Part I of Subchapter M of the Code applies the shares of which are—

(A) Continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(B) Regularly traded on an established securities market, or

(C) Held by or for no fewer than 500 persons at all times during the taxable year.

(h) *Affected investor*—(1) *In general.* For purposes of this section, the term ''affected investor'' means a partner, shareholder, beneficiary, participant, or other interest holder in a pass-through entity at any time during the pass-through entity's taxable year that is—

(i) An individual (other than a nonresident alien whose income with respect to his or her interest in the pass-through entity is not effectively connected with the conduct of a trade or business within the United States),

(ii) A person, including a trust or estate, that computes its taxable income in the same manner as in the case of an individual; or

(iii) A pass-through entity if one or more of its partners, shareholders, beneficiaries, participants, or other interest holders is (A) a pass-through entity or (B) a person described in paragraph (h)(1) (i) or (ii) of this section.

(2) *Examples.* The provisions of this paragraph (h) may be illustrated by the following examples:

*Example 1.* Corporation X holds shares of nonpublicly offered regulated investment company R in its capacity as a nominee or custodian for individual A, the beneficial owner of the shares. Because the owner of the shares for Federal income tax purposes is an individual, the shares are owned by an affected investor.

*Example 2.* Individual retirement account I owns shares of a nonpublicly offered regulated investment company. Because an individual retirement account is not a person described in paragraph (h)(1) of this section, the shares are not owned by an affected investor.

(i) *Affected expenses*—(*1*) *In general.* In general, for purposes of this section, the term ''affected expenses'' means expenses that, if paid or incurred by an individual, would be deductible, if at all, as miscellaneous itemized deductions as defined in section 67(b).

(2) *Special rule for nonpublicly offered regulated investment companies.* In the case of a nonpublicly offered regulated investment company, the term ''affected expenses'' means only affected RIC expenses.

(j) *Affected RIC expenses*—(1) *In general.* In general, for purposes of this section the term ''affected RIC expenses'' means the excess of—

(i) The aggregate amount of the expenses (other than expenses described in sections 62(a)(3) and 67(b) and § 1.67–1T(b)) paid or incurred in the calendar year that are allowable as a deduction in determining the investment company taxable income (without regard to section 852(b)(2)(D)) of the nonpublicly offered regulated investment company for a taxable year that begins or ends with or within the calendar year, over

(ii) The amount of expenses taken into account under paragraph (j)(1)(i) of this section that are allocable to the following items (whether paid separately or included as part of a fee paid to an investment advisor or other person for a variety of services):

(A) Registration fees;

(B) Directors' or trustees' fees;

(C) Periodic meetings of directors, trustees, or shareholders;

(D) Transfer agent fees;

(E) Legal and accounting fees (other than fees for income tax return preparation or income tax advice); and

(F) Shareholder communications required by law (e.g. the preparation and mailing of prospectuses and proxy statements).

Expenses described in paragraph (j)(1)(ii) (A) through (F) of this section do not include, for example, expenses allocable to investment advice, marketing activities, shareholder communications and other services not specifically described in paragraph (j)(1)(ii) (A) through (F) of this section, and custodian fees.

(2) *Safe harbor.* If a nonpublicly offered regulated investment company makes an election under this paragraph (j)(2), the affected RIC expenses for a calendar year shall be treated as equal to 40 percent of the amount determined under paragraph (j)(1)(i) of this section for that calendar year. The nonpublicly offered regulated investment company shall make the election by attaching to its income tax return for the taxable year that includes the last day of the first calendar year for which the nonpublicly offered regulated investment company makes the

election a statement that it is making an election under paragraph (j)(2) of this section. An election made pursuant to this paragraph (j)(2) shall remain in effect for all subsequent calendar years unless revoked with the consent of the Commissioner.

(3) *Reduction for unused RIC expenses.* The amount determined under paragraph (j)(1)(i) of this section shall be reduced by the nonpublicly offered regulated investment company's net operating loss, if any, for the taxable year ending with or within the calendar year. In computing the nonpublicly offered regulated investment company's net operating loss for purposes of this section, the deduction for dividends paid shall not be allowed and any net capital gain for the taxable year shall be excluded.

(4) *Exception.* The affected RIC expenses of a nonpublicly offered regulated investment company will be treated as zero if the amount of its gross income for the calendar year (determined without regard to capital gain net income) is not greater than 1 percent of the sum of (i) such gross income and (ii) the amount of its interest income for the calendar year that is not includible in gross income pursuant to section 103.

(k) *Allocation of expenses among nonpublicly offered regulated investment company shareholders*—(1) *General rule.* A nonpublicly offered regulated investment company shall allocate to each of its affected investors that is a shareholder at any time during the calendar year, the affected investor's allocable share of the affected RIC expenses of the nonpublicly offered regulated investment company for that calendar year. (See paragraph (m) of this section for rules regarding estimates with respect to the amount of an affected investor's share of affected RIC expenses upon which certain persons can rely for certain purposes.) A nonpublicly offered regulated investment company may use any reasonable method to make the allocation. A method of allocation shall not be reasonable if—

(i) The method can be expected to have the effect, if applied to all affected RIC expenses and all shareholders (whether or not affected investors), of allocating to the shareholders an amount of affected RIC expenses that is less than the affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year,

(ii) The method can be expected to have the effect of allocating a disproportionately high share of the affected RIC expenses of the nonpublicly offered regulated investment company to shareholders that are not affected investors or affected investors, the amount of whose miscellaneous itemized deductions (including their allocable share of affected RIC expenses) exceeds the 2-percent floor described in section 67, or

(iii) A principal purpose of the method of allocation is to avoid allocating affected RIC expenses to persons described in paragraph (h)(1) (i) or (ii) of this section whose miscellaneous itemized deductions (inclusive of their allocable share of affected RIC expenses) may not exceed the 2-percent floor described in section 67.

(2) *Reasonable allocation method described*—(i) *In general.* The allocation method described in this paragraph (k)(2) shall be treated as a reasonable allocation method. Under the method described in this paragraph, an affected investor's allocable share of the affected RIC expenses of a nonpublicly offered regulated investment company is the amount that bears the same ratio to the amount of affected RIC expenses of the nonpublicly offered regulated investment company for the calendar year as—

(A) The amount of dividends paid to the affected investor during the calendar year, bears to

(B) The sum of—

(*1*) The aggregate amount of dividends paid by the nonpublicly offered regulated investment company during the calendar year to all shareholders, and

(*2*) Any amount on which tax is imposed under section 852(b)(1) for any taxable year of the nonpublicly offered regulated investment company ending within or with the calendar year.

(ii) *Exception.* Paragraph (k)(2)(i) of this section does not apply if the amount of the deduction for dividends paid during the calendar year is zero.

(iii) *Dividends paid*. For purposes of this paragraph (k)(2)—

(A) Dividends that are treated as paid during a calendar year pursuant to section 852(b)(7) are treated as paid during that calendar year and not during the succeeding calendar year.

(B) The term ''dividends paid'' does not include capital gain dividends (as defined in section 852(b)(3)(C)), exempt-interest dividends (as defined in section 852(b)(5)(A)), or any amount to which section 302(a) applies.

(C) The dividends paid during a calendar year is determined without regard to section 855(a).

(3) *Reasonable allocation made by District Director*. If a nonpublicly offered regulated investment company does not make a reasonable allocation of affected RIC expenses to its affected investors as required by paragraph (k)(1) of this section, a reasonable allocation shall be made by the District Director of the internal revenue district in which the principal place of business or principal office or agency of the nonpublicly offered regulated investment company is located.

(4) *Examples*. The provisions of this paragraph (k) may be illustrated by the following examples:

*Example 1*. Nonpublicly offered regulated investment company M, in calculating its investment company taxable income, claims a dividends paid deduction for a portion of redemption distributions (to which section 302(a) applies) to shareholders, as well as for nonredemption distributions. M allocates affected expenses among shareholders who have received nonredemption distributions by multiplying the amount of nonredemption distributions distributed to each shareholder by a fraction, the numerator of which is the affected RIC expenses of M and the denominator of which is M's investment company taxable income, determined on a calendar year basis and without regard to deductions described in section 852(b)(2)(D). No affected RIC expenses are allocated with respect to the redemption distributions. This allocation method can be expected to have the effect of allocating among the shareholders an amount of expenses that is less than the total amount of affected RIC expenses of M. Accordingly, the allocation method is not reasonable.

*Example 2*. Nonpublicly offered regulated investment company N has two classes of stock, a ''capital'' class and an ''income'' class. Owners of the capital class receive the benefit of all capital appreciation on the stocks owned by N, and bear the burden of certain capital expenditures of N; owners of the income class receive the benefit of all other income of N, and bear the burden of all expenses of N that are deductible under section 162. M allocates all affected RIC expenses among shareholders of the income class shares under a method that would be reasonable if the income class were the only class of N stock. Corporations and other shareholders that are not affected investors own a higher proportion of income class shares than of capital class shares. The affected RIC expenses of N are properly allocated among the shareholders who bear the burden of those expenses. Accordingly, the allocation method does not have the effect of allocating a disproportionately high share of the affected RIC expenses of N to shareholders that are not affected investors merely because a disproportionate share of income class shares are owned by shareholders that are not affected investors. The allocation method is reasonable.

*Example 3*. Nonpublicly offered regulated investment company O has two classes of stock, Class A and Class B. Shares of Class A, which may be purchased without payment of a sales or brokerage commission, are charged with the expenses of a Rule 12b–1 distribution plan of O. Shares of Class B, which may be purchased only upon payment of a sales or brokerage commission, are not charged with the expenses of the Rule 12b–1 distribution plan of O. O allocates all affected RIC expenses among shareholders of Class A and Class B shares under a method that would be reasonable if Class A or Class B shares, respectively, were the only class of O stock. The affected RIC expenses attributable to the Rule 12b–1 plan are allocated to the shareholders of Class A shares. Shareholders that are not affected investors own a higher proportion of Class A shares than of Class B shares. The affected RIC expenses of O are properly allocated among the shareholders who bear the burden of those expenses. Accordingly, the allocation method does not have the effect of allocating a disproportionately high share of the affected RIC expenses of O to shareholders that are not affected investors merely because a disproportionately high share of Class A shares are owned by persons that are not affected investors. The allocation method is reasonable.

*Example 4*. Assume the facts are the same as in example (3) except that a portion of the affected RIC expenses attributable to the Rule 12b–1 plan are allocated to the shareholders of Class B shares, and shareholders that are not affected investors own a higher proportion of Class B shares than of Class A shares. Thus, the affected RIC expenses are not allocated among the class of shareholders that bear the burden of the expenses. Accordingly, the allocation method has the effect of allocating a disproportionate share of the affected RIC expenses of O to the shareholders of Class B shares. Because shareholders that are not affected investors own a higher proportion of Class B shares than Class A shares, the method can be expected to allocate a disproportionately high share of the affected RIC expenses of O to shareholders that are not affected investors. Accordingly, the allocation method is not reasonable.

(l) *Affected RIC expenses not subject to backup withholding.* The amount of dividend income that an affected investor in a nonpublicly offered regulated investment company is treated as having received or accrued under paragraph (e)(1)(ii) of this section is not subject to backup withholding under section 3406.

(m) *Reliance by nominees and pass-through investors on notices*—(1) *General rule.* Persons described in paragraph (m)(3) of this section may, for the purposes described in that paragraph (m)(3), treat an affected investor's allocable share of the affected RIC expenses of a nonpublicly offered regulated investment company as being equal to an amount determined by the nonpublicly offered regulated investment company on the basis of a reasonable estimate (e.g., of allocable expenses as a percentage of dividend distributions or allocable expenses per share) that is (i) reported in writing by the nonpublicly offered regulated investment company to the person or (ii) reported in a newspaper or financial publication having a nationwide circulation (e.g., the *Wall Street Journal* or *Standard and Poor's Weekly Dividend Record*).

(2) *Estimates must be reasonable.* In general, for purposes of paragraph (m)(1) of this section, estimates of affected RIC expenses of a nonpublicly offered regulated investment company will be treated as reasonable only if the nonpublicly offered regulated investment company makes a reasonable effort to offset material understatements (or overstatements) of affected RIC expenses for a period by increasing (or decreasing) estimates of affected RIC expenses for a subsequent period. Understatements or overstatements of affected RIC expenses that are not material may be corrected by making offsetting adjustments in future periods, provided that understatements and overstatements are treated consistently.

(3) *Application.* Paragraph (m)(1) of this section shall apply to the following persons for the following purposes:

(i) A nominee who, pursuant to section 6042(a)(1)(B) and paragraph (n)(2) of this section, is required to report dividends paid by a nonpublicly offered regulated investment company to the Internal Revenue Service and to the person to whom the payment is made, for purposes of reporting to the Internal Revenue Service and the person to whom the payment is made the amount of affected RIC expenses allocated to such person.

(ii) An affected investor to whom a nominee (to which paragraph (m)(3)(i) of this section applies) reports, for purposes of calculating the affected investor's taxable income and the amount of its affected expenses.

(iii) A shareholder that is a pass-through entity, for purposes of calculating its taxable income and the amount of its affected expenses.

(n) *Return of information and reporting to affected investors by a nonpublicly offered regulated investment company*—(1) *In general*—(i) *Return of information.* A nonpublicly offered regulated investment company shall make an information return (e.g., Form 1099–DIV, Dividends and Distributions, for 1987) with respect to each affected investor to which an allocation of affected RIC expenses is required to be made pursuant to paragraph (k) of this section and for which the nonpublicly offered regulated investment company is required to make an information return to the Internal Revenue Service pursuant to section 6042 (or would be required to make such information return but for the $10 threshold described in section 6042 (a)(1) (A) and (B). The nonpublicly offered regulated investment company shall make the information return for each calendar year and shall state separately on such return—

(A) The amount of affected RIC expenses required to be allocated to the affected investor for the calendar year pursuant to paragraph (k) of this section,

(B) The sum of—

(*1*) The aggregate amount of the dividends paid to the affected investor during the calendar year, and

(*2*) The amount of the affected RIC expenses required to be allocated to the affected investor for the calendar year pursuant to paragraph (k) of this section, and

(C) Such other information as may be specified by the form or its instructions.

(ii) *Statement to be furnished to affected investors.* A nonpublicly offered regulated investment company shall provide to each affected investor for each calendar year (whether or not the nonpublicly offered regulated investment company is required to make an information return with respect to the affected investor pursuant to section 6042), a written statement showing the following information:

(A) The information described in paragraph (n)(1)(i) of this section with respect to the affected investor;

(B) The name and address of the nonpublicly offered regulated investment company;

(C) The name and address of the affected investor; and

(D) If the nonpublicly offered regulated investment company is required to report the amount of the affected investor's allocation of affected RIC expense to the Internal Revenue Service pursuant to paragraph (n)(1)(i) of this section a statement to that effect.

(iii) *Affected investor's shares held by a nominee.* If an affected investor's shares in a nonpublicly offered regulated investment company are held in the name of a nominee, the nonpublicly offered regulated investment company may make the information return described in paragraph (n)(1)(i) of this section with respect to the nominee in lieu of the affected investor and may provide the written statement described in paragraph (n)(1)(ii) of this section to such nominee in lieu of the affected investor.

(2) *By a nominee*—(i) *In general.* Except as otherwise provided for in paragraph (n)(2)(iii) of this section, in any case in which a nonpublicly offered regulated investment company provides, pursuant to paragraph (n)(1)(iii) of this section, a written statement to the nominee of an affected investor for a calendar year, the nominee shall—

(A) If the nominee is required to make an information return pursuant to section 6042 (or would be required to make an information return but for the $10 threshold described in section 6042(a)(1) (A) and (B), make an information return (e.g., Form 1099–DIV, Dividends and Distributions, for 1987) for the calendar year with respect to each affected investor and state separately on such information return the information described in paragraph (n)(1)(i) of this section, and

(B) Furnish each affected investor with a written statement for the calendar year showing the information required by paragraph (n)(2)(ii) of this section (whether or not the nominee is required to make an information return with respect to the affected investor pursuant to section 6042).

(ii) *Form of statement.* The written statement required to be furnished for a calendar year pursuant to paragraph (n)(2)(i)(B) of this section shall show the following information:

(A) The affected investor's proportionate share of the items described in paragraph (n)(1)(i) of this section for the calendar year,

(B) The name and address of the nominee,

(C) The name and address of the affected investor, and

(D) If the nominee is required to report the affected investor's share of the allocable investment expenses to the Internal Revenue Service pursuant to paragraph (n)(2)(i)(A) of this section, a statement to that effect.

(iii) *Return not required.* A nominee is not required to make an information return with respect to an affected investor pursuant to paragraph (n)(2)(i)(A) of this section if the nominee is excluded from the requirements of section 6042 pursuant to §1.6042–2(a)(1) (ii) or (iii).

(iv) *Statement not required.* A nominee is not required to furnish a written statement to an affected investor pursuant to paragraph (n)(2)(i)(B) of this section if the nonpublicly offered regulated investment company furnishes the written statement to the affected investor pursuant to an agreement with the nominee described in §1.6042–2(a)(1)(iii).

(v) *Special rule.* Paragraph (n)(1) (i) and (ii) of this section applies to a nonpublicly offered regulated investment company that agrees with the nominee to satisfy the requirements of section 6042 as described in §1.6042–2(a)(1)(iii) with respect to the affected investor.

(3) *Time and place for furnishing returns.* The returns required by paragraph (n)(1)(i) and (2)(i)(A) of this section for any calendar year shall be filed at the time and place that a return required under section 6042 is required to be filed. See §1.6042–2(c) .

(4) *Time for furnishing statements.* The statements required by paragraph (n)(1)(ii) and (2)(i)(B) of this section to be furnished by a nonpublicly offered regulated investment company and a nominee, respectively, to an affected investor for a calendar year shall be furnished to such affected investor on or before January 31 of the following year.

(5) *Duplicative returns and statements not required*—(i) *Information return.* The requirements of paragraph (n)(1)(i) and (2)(i)(A) of this section for the making of an information return shall be met by the timely filing of an information return pursuant to section 6042 that contains the information required by paragraph (n)(1)(i).

(ii) *Written statement.* The requirements of paragraph (n)(1)(ii) and (2)(i)(B) of this section for the furnishing of a written statement (including the statement required by paragraph (n)(1)(ii)(D) and (2)(ii)(D) of this section) shall be met by furnishing the affected investor a copy of the information return to which section 6042 applies (whether or not the nonpublicly offered regulated investment company or nominee is required to file an information return with respect to the affected investor pursuant to section 6042) that contains the information required by paragraph (n)(1)(ii) or (2)(ii), whichever is applicable, of this section. Nonpublicly offered regulated investment companies and nominees may use a substitute form that contains provisions substantially similar to those of the prescribed form if the nonpublicly offered regulated investment company or nominee complies with all revenue procedures relating to substitute forms in effect at the time. The statement shall be furnished either in person or in a statement mailed by first-class mail that includes adequate notice that the statement is enclosed. A statement shall be considered to be furnished to an affected investor within the meaning of this section if it is mailed to such affected investor at its last known address.

(o) *Return of information by a common trust fund.* With respect to each affected investor to which paragraph (d) of this section applies, the common trust fund shall state on the return it is required to make pursuant to section 6032 for its taxable year, the following information:

(1) The amount of the affected investor's proportionate share of the affected expenses for the taxable year as described in paragraph (d)(1)(ii) of this section.

(2) The amount of the affected investor's proportionate share of ordinary taxable income or ordinary net loss for the taxable year determined pursuant to paragraph (d)(1)(i) of this section, and

(3) Such other information as may be specified by the form or its instructions.

(p) *Publicly offered regulated investment companies.* [Reserved]

[T.D. 8189, 53 FR 9876, Mar. 28, 1988; 53 FR 13464, Apr. 25, 1988]

### § 1.67–3 Allocation of expenses by real estate mortgage investment conduits.

(a) *Allocation of allocable investment expenses.* [Reserved]

(b) *Treatment of allocable investment expenses.* [Reserved]

(c) *Computation of proportionate share.* [Reserved]

(d) *Example.* [Reserved]

(e) *Allocable investment expenses not subject to backup withholding.* [Reserved]

(f) *Notice to pass-through interest holders*—(1) *Information required.* A REMIC must provide to each pass-through interest holder to which an allocation of allocable investment expense is required to be made under §1.67–3T(a)(1) notice of the following—

(i) If, pursuant to paragraph (f)(2)(i) or (ii) of this section, notice is provided for a calendar quarter, the aggregate amount of expenses paid or accrued during the calendar quarter for which the REMIC is allowed a deduction under section 212;

(ii) If, pursuant to paragraph (f)(2)(ii) of this section, notice is provided to a regular interest holder for a calendar year, the aggregate amount of expenses paid or accrued during each calendar quarter that the regular interest holder held the regular interest in the calendar year and for which the REMIC is allowed a deduction under section 212; and

(iii) The proportionate share of these expenses allocated to that pass-through interest holder, as determined under §1.67–3T(c).

(2) *Statement to be furnished*—(i) *To residual interest holder*. For each calendar quarter, a REMIC must provide to each pass-through interest holder who holds a residual interest during the calendar quarter the notice required under paragraph (f)(1) of this section on Schedule Q (Form 1066), as required in §1.860F–4(e).

(ii) *To regular interest holder*. For each calendar year, a single-class REMIC (as described in §1.67–3T(a)(2)(ii)(B)) must provide to each pass-through interest holder who held a regular interest during the calendar year the notice required under paragraph (f)(1) of this section. Quarterly reporting is not required. The information required to be included in the notice may be separately stated on the statement described in §1.6049–7(f) instead of on a separate statement provided in a separate mailing. See §1.6049–7(f)(4). The separate statement provided in a separate mailing must be furnished to each pass-through interest holder no later than the last day of the month following the close of the calendar year.

(3) *Returns to the Internal Revenue Service*—(i) *With respect to residual interest holders*. Any REMIC required under paragraphs (f)(1) and (2)(i) of this section to furnish information to any pass-through interest holder who holds a residual interest must also furnish such information to the Internal Revenue Service as required in §1.860F–4(e)(4).

(ii) *With respect to regular interest holders*. A single-class REMIC (as described in §1.67–3T(a)(2)(ii)(B)) must make an information return on Form 1099 for each calendar year, with respect to each pass-through interest holder who holds a regular interest to which an allocation of allocable investment expenses is required to be made pursuant to §1.67–3T(a)(1) and (2)(ii). The preceding sentence applies with respect to a holder for a calendar year only if the REMIC is required to make an information return to the Internal Revenue Service with respect to that holder for that year pursuant to section 6049 and §1.6049–7(b)(2)(i) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(1) and §1.6049–7(b)(2)(i)). The REMIC must state on the information return—

(A) The sum of—

(*1*) The aggregate amounts includible in gross income as interest (as defined in §1.6049–7(a)(1)(i) and (ii)), for the calendar year; and

(*2*) The sum of the amount of allocable investment expenses required to be allocated to the pass-through interest holder for each calendar quarter during the calendar year pursuant to §1.67–3T(a); and

(B) Any other information specified by the form or its instructions.

(4) *Interest held by nominees and other specified persons*—(i) *Pass-through interest holder's interest held by a nominee*. If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may make the information return described in paragraphs (f)(3)(i) and (ii) of this section with respect to the nominee in lieu of the pass-through interest holder and may provide the written statement described in paragraphs (f)(2)(i) and (ii) of this section to that nominee in lieu of the pass-through interest holder.

(ii) *Regular interests in a single-class REMIC held by certain persons*. If a person specified in §1.6049–7(e)(4) holds a regular interest in a single-class REMIC (as described in §1.67–3T(a)(2)(ii)(B)), then the single-class REMIC must provide the information described in paragraphs (f)(1) and (f)(3)(ii)(A) and (B) of this section to that person with the information specified in §1.6049–7(e)(2) as required in §1.6049–7(e).

(5) *Nominee reporting*—(i) *In general.* In any case in which a REMIC provides information pursuant to paragraph (f)(4) of this section to a nominee of a pass-through interest holder for a calendar quarter or, as provided in paragraph (f)(2)(ii) of this section, for a calendar year—

(A) The nominee must furnish each pass-through interest holder with a written statement described in paragraph (f)(2)(i) or (ii) of this section, whichever is applicable, showing the information described in paragraph (f)(1) of this section; and

(B) The nominee must make an information return on Form 1099 for each calendar year, with respect to the pass-through interest holder and state on this information return the information described in paragraphs (f)(3)(ii) (A) and (B) of this section, if—

(*1*) The nominee is a nominee for a pass-through interest holder who holds a regular interest in a single-class REMIC (as described in §1.67–3T(a)(2)(ii)(B)); and

(*2*) The nominee is required to make an information return pursuant to section 6049 and §1.6049–7 (b)(2)(i) and (b)(2)(ii)(B) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(2) and §1.6049–7(b)(2)(i)) with respect to the pass-through interest holder.

(ii) *Time for furnishing statement.* The statement required by paragraph (f)(5)(i)(A) of this section to be furnished by a nominee to a pass-through interest holder for a calendar quarter or calendar year must be furnished to this holder no later than 30 days after receiving the written statement described in paragraph (f)(2)(i) or (ii) of this section from the REMIC. If, however, pursuant to paragraph (f)(2)(ii) of this section, the information is separately stated on the statement described in §1.6049–7(f), then the information must be furnished to the pass-through interest holder in the time specified in §1.6049–7(f)(5).

(6) *Special rules*—(i) *Time and place for furnishing returns.* The returns required by paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for any calendar year must be filed at the time and place that a return required under section 6049 and §1.6049–7(b)(2) is required to be filed. See §1.6049–4(g) and §1.6049–7(b)(2)(iv).

(ii) *Duplicative returns not required.* The requirements of paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for the making of an information return are satisfied by the timely filing of an information return pursuant to section 6049 and §1.6049–7(b)(2) that contains the information required by paragraph (f)(3)(ii) of this section.

[T.D. 8431, 57 FR 40321, Sept. 3, 1992]

**§ 1.67–3T Allocation of expenses by real estate mortgage investment conduits (temporary).**

(a) *Allocation of allocable investment expenses*—(1) *In general.* A real estate mortgage investment conduit or REMIC (as defined in section 860D) shall allocate to each of its pass-through interest holders that holds an interest at any time during the calendar quarter the holder's proportionate share (as determined under paragraph (c) of this section) of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter.

(2) *Pass-through interest holder*—(i) *In general*—(A) *Meaning of term.* Except as provided in paragraph (a)(2)(ii) of this section, the term "pass-through interest holder" means any holder of a REMIC residual interest (as definition in section 860G(a)(2)) that is—

(*1*) An individual (other than a nonresident alien whose income with respect to his or her interest in the REMIC is not effectively connected with the conduct of a trade or business within the United States),

(*2*) A person, including a trust or estate, that computes its taxable income in the same manner as in the case of an individual, or

(*3*) A pass-through entity (as defined in paragraph (a)(3) of this section) if one or more of its partners, shareholders, beneficiaries, participants, or other interest holders is (*i*) a pass-through entity or (*ii*) a person described in paragraph (a)(2)(i)(A) (*1*) or (*2*) of this section.

(B) *Examples.* The provisions of this paragraph (a)(2)(i) may be illustrated by the following examples:

*Example 1.* Corporation X holds a residual interest in REMIC R in its capacity as a nominee or custodian for individual A, the beneficial owner of the interest. Because the owner of the interest for Federal income tax purposes is an individual, the interest is owned by a pass-through interest holder.

*Example 2.* Individual retirement account I holds a residual interest in a REMIC. Because an individual retirement account is not a person described in paragraph (a)(2)(i)(A) of this section, the interest is not held by a pass-through interest holder.

(ii) *Single-class REMIC*—(A) *In general.* In the case of a single-class REMIC, the term ''pass-through interest holder'' means any holder of either—

(*1*) A REMIC regular interest (as defined in section 860G(a)(1)), or

(*2*) A REMIC residual interest, that is described in paragraph (a)(2)(i)(A) (*1*), (*2*), or (*3*) of this section.

(B) *Single-class REMIC.* For purposes of paragraph (a)(2)(ii)(A) of this section, a single-class REMIC IS either—

(*1*) A REMIC that would be classified as an investment trust under §301.7701–4(c)(1) but for its qualification as a REMIC under section 860D and §1.860D–1T, or

(*2*) A REMIC that—

(*i*) Is substantially similar to an investment trust under §301.7701–4(c)(1), and

(*ii*) Is structured with the principal purpose of avoiding the requirement of paragraphs (a)(1) and (2)(ii)(A) of this section to allocate allocable investment expenses to pass-through interest holders that hold regular interests in the REMIC.

For purposes of this paragraph (a)(2)(ii)(B), in determining whether a REMIC would be classified as an investment trust or is substantially similar to an investment trust, all interests in the REMIC shall be treated as ownership interests in the REMIC, without regard to whether or not they would be classified as debt for Federal income tax purposes in the absence of a REMIC election.

(C) *Examples.* The provisions of paragraph (a)(2)(ii) of this section must be illustrated by the following examples:

*Example 1.* Corporation M transfers mortgages to a bank under a trust agreement as described in Example (2) of §301.7701–4(c)(2). There are two classes of certificates. Holders of class C certificates are entitled to receive 90 percent of the payment of principal and interest on the mortgages; holders of class D certificates are entitled to receive the remaining 10 percent. The two classes of certificates are identical except that, in the event of a default on the underlying mortgages, the payment rights of class D certificates holders are subordinated to the rights of class C certificate holders. M sells the class C certificates to investors and retains the class D certificates. The trust would be classified as an investment trust under §301.7701–4(c)(1) but for its qualification a REMIC under section 860D the class C certificates represent regular interests in the REMIC and the class D certificates represent residual interest in the REMIC. The REMIC is a single-class REMIC within the meaning of paragraph (a)(2)(ii)(B)(*1*) of this section and, accordingly, holders of both the class C and class D certificates who are described in paragraph (a)(2)(i)(A) (*1*), (*2*), or (*3*) of this section are treated as pass-through interest holders.

*Example 2.* Assume that the facts are the same as in Example (1) except that M structures the REMIC to include a second regular interest represented by class E certificates. The principal purpose of M in structuring the REMIC to include class E certificates is to avoid allocating allocable investment expenses to class C certificate holders. The class E certificate holders are entitled to receive the payments otherwise due the class D certificate holders until they have been paid a stated amount of principal plus interest. The fair market value of the class E certificate is ten percent of the fair market value of the class D certificate and, therefore, less than one percent of the fair market value of the REMIC. The REMIC would not be classified as an investment trust under §301.7701–4(c)(1) because the existence of the class E certificates is not incidental to the trust's purpose of facilitating direct investment in the assets of the trust. Nevertheless, because the fair market value of the class E certificates is de minimis, the REMIC is substantially similar to an investment trust under §301.7701–4(c)(1). In addition, avoidance of the requirement to allocate allocable investment expenses to regular interest holders is the principal purpose of M in structuring the REMIC to include class E certificates. Therefore, the REMIC is a single-class REMIC within the meaning of paragraph (a)(2)(ii)(B)(*2*) of this section, and, accordingly, holders of both residual and regular interests who are described in paragraph (a)(2)(i)(A) (*1*), (*2*), or (*3*) of this section are treated as pass-through interest holders.

(3) *Pass-through entity*—(i) *In general*. Except as provided in paragraph (a)(3)(ii) of this section, for purposes of this section, a pass-through entity is—

(A) A trust (or any portion thereof) to which Subpart E, Part 1, Subchapter J, Chapter 1 of the Code applies,

(B) A partnership,

(C) An S corporation,

(D) A common trust fund described in section 584,

(E) A nonpublicly offered regulated investment company (as defined in paragraph (a)(5)(i) of this section),

(F) A REMIC, and

(G) Any other person—

(*1*) Which is not subject to income tax imposed by Subtitle A, Chapter 1, or which is allowed a deduction in computing such tax for distributions to owners or beneficiaries, and

(*2*) The character of the income of which may affect the character of the income recognized with respect to that person by its owners or beneficiaries.

Entities that do not meet the requirements of paragraphs (a)(3)(i)(G) (*1*) and (*2*), such as qualified pension plans, individual retirement accounts, and insurance companies holding assets in separate asset accounts to fund variable contracts defined in section 817(d), are not described in this paragraph (a)(3)(i).

(ii) *Exception*. For purposes of this section, a pass-through entity does not include—

(A) An estate,

(B) A trust (or any portion thereof) not described in paragraph (a)(3)(i)(A) of this section,

(C) A cooperative described without regard to subparagraphs (A) and (C) thereof, or

(D) A real estate investment trust.

(4) *Allocable investment expenses*. The term ''allocable investment expenses'' means the aggregate amount of the expenses paid or accrued in the calendar quarter for which a deduction is allowable under section 212 in determining the taxable income of the REMIC for the calendar quarter.

(5) *Nonpublicly offered regulated investment company*—(i) *In general*. For purposes of this section, the term ''nonpublicly offered regulated investment company'' means a regulated investment company to which Part I of Subchapter M of the Code applies that is not a publicly offered regulated investment company.

(ii) *Publicly offered regulated investment company*. For purposes of this section, the term ''publicly offered regulated investment company'' means a regulated investment company to which Part I of subchapter M of the Code applies, the shares of which are—

(A) Continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(B) Regularly traded on an established securities market, or

(C) Held by or for no fewer than 500 persons at all times during the taxable year.

(b) *Treatment of allocable investment expenses*—(1) *By pass-through interest holders*—(i) *Taxable year ending with calendar quarter*. A pass-through interest holder whose taxable year is the calendar year or ends with a calendar quarter shall be treated as having—

(A) Received or accrued income, and

(B) Paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company), in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC for those calendar quarters that fall within the holder's taxable year.

(ii) *Taxable year not ending with calendar quarter*. A pass-through interest holder whose taxable year does not end with a calendar quarter shall be treated as having—

(A) Received or accrued income, and

(B) Paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company), in an amount equal to the sum of—

(C) The pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC for those calendar quarters that fall within the holder's taxable year, and

(D) For each calendar quarter that overlaps the beginning or end of the taxable year, the sum of the daily amounts of the allocable investment expenses allocated to the holder pursuant to paragraph (c)(1)(ii) of this section for the days in the quarter that fall within the holder's taxable year.

(2) *Proportionate share of allocable investment expenses.* For purposes of paragraph (b) of this section, a pass-through interest holder's proportionate share of the allocable investment expenses is the amount allocated to the pass-through interest holder pursuant to paragraph (a)(1) of this section.

(3) *Cross-reference.* See § 1.67–1T with respect to limitations on deductions for expenses described in section 212 (including amounts treated as such expenses under this section).

(4) *Interest income to holders of regular interests in certain REMICs.* Any amount allocated under this section to the holder of a regular interest in a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall be treated as interest income.

(5) *No adjustment to basis.* The basis of any holder's interest in a REMIC shall not be increased or decreased by the amount of the holder's proportionate share of allocable investment expenses.

(6) *Interest holders other than pass-through interest holders.* An interest holder of a REMIC that is not a pass-through interest holder shall not take into account in computing its taxable income any amount of income or expense with respect to its proportionate share of allocable investment expenses.

(c) *Computation of proportionate share*—(1) *In general.* For purposes of paragraph (a)(1) of this section, a REMIC shall compute a pass-through interest holder's proportionate share of the REMIC's allocable investment expenses by—

(i) Determining the daily amount of the allocable investment expenses for the calendar quarter by dividing the total amount of such expenses by the number of days in that calendar quarter.

(ii) Allocating the daily amount of the allocable investment expenses to the pass-through interest holder in proportion to its respective holdings on that day, and

(iii) Totaling the interest holder's daily amounts of allocable investment expenses for the calendar quarter.

(2) *Other holders taken into account.* For purposes of paragraph (c)(1)(ii) of this section, a pass-through interest holder's proportionate share of the daily amount of the allocable investment expenses is determined by taking into account all holders of residual interests in the REMIC, whether or not pass-through interest holders.

(3) *Single-class REMIC*—(i) *Daily allocation.* In lieu of the allocation specified in paragraph (c)(1)(ii) of this section, a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall allocate the daily amount of the allocable investment expenses to each pass-through interest holder in proportion to the amount of income accruing to the holder with respect to its interest in the REMIC on that day.

(ii) *Other holders taken into account.* For purposes of paragraph (c)(3)(i) of this section, the amount of the allocable investment expenses that is allocated on any day to each pass-through interest holder shall be determined by multiplying the daily amount of allocable investment expenses (determined pursuant to paragraph (c)(1)(i) of this section) by a fraction, the numerator of which is equal to the amount of income that accrues (but not less than zero) to the pass-through interest holder on that day and the denominator of which is the total amount of income (as determined under paragraph (c)(3)(iii) of this section) that accrues to all regular and residual interest holders, whether or not pass-through interest holders, on that day.

(iii) *Total income accruing.* The total amount of income that accrues to all regular and residual interest holders is the sum of—

(A) The amount includible under section 860B in the gross income (but not less than zero) of the regular interest holders, and

(B) The amount of REMIC taxable income (but not less than zero) taken into account under section 860C by the residual interest holders.

(4) *Dates of purchase and disposition.* For purposes of this section, a pass-through interest holder holds an interest on the date of its purchase but not on the date of its disposition.

(d) *Example*. The provisions of this section may be illustrated by the following example:

*Example*. (i) During the calendar quarter ending March 31, 1989, REMIC X, which is not a single-class REMIC, incurs $900 of allocable investment expenses. At the beginning of the calendar quarter, X has 4 residual interest holders, who hold equal proportionate shares, and 10 regular interest holders. The residual interest holders, all of whom have calendar-year taxable years, are as follows:

A, an individual,

C, a C corporation that is a nominee for individual I.

S, an S corporation, and

M, a C corporation that is not a nominee.

(ii) Except for A, all of the residual interest holders hold their interests in X for the entire calendar quarter. On January 31, 1989, A sells his interest to S. Thus, for the first month of the calendar quarter, each residual interest holder holds a 25 percent interest (100%/4 interest holders) in X. For the last two months, S's holding is increased to 50 percent and A's holding is decreased to zero. The daily amount of allocable investment expenses for the calendar quarter is $10 ($900/90 days).

(iii) The amount of allocable investment expenses apportioned to the residual interest holders is as follows:

(A) $75 ($10 × 25% × 30 days) is allocated to A for the 30 days that A holds an interest in X during the calendar quarter. A includes $75 in gross income in calendar year 1989. The amount of A's expenses described in section 212 is increased by $75 in calendar year 1989. A's deduction under section 212 (including the $75 amount of the allocation) is subject to the limitations contained in section 67.

(B) $225 ($10 × 25% × 90 days) is allocated to C. Because C is a nominee for I, C does not include $225 in gross income or increase its deductible expenses by $225. Instead, I includes $225 in gross income in calendar year 1989, her taxable year. The amount of I's expenses described in section 212 is increased by $225. I's deduction under section 212 (including the $225 amount of the allocation) is subject to the limitations contained in section 67.

(C) $375 (($10 × 25% × 30 days) + ($10 × 50% × 60 days)) is allocated to S. S includes in gross income $375 of allocable investment expenses in calendar year 1989. The amount of S's expenses described in section 212 for that taxable year is increased by $375. S allocates the $375 to its shareholders in accordance with the rules described in sections 1366 and 1377 in calendar year 1989. Thus, each shareholder of S includes its pro rata share of the $375 in gross income in its taxable year in which or with which calendar year 1989 ends. The amount of each shareholder's expenses described in section 212 is increased by the amount of the shareholder's allocation for the shareholder's taxable year in which or with which calendar year 1989 ends. The shareholder's deduction under section 212 (including the allocation under this section) is subject to the limitations contained in section 67.

(D) No amount is allocated to M. However, M's interest is taken into account for purposes of determining the proportionate share of those residual interest holders to whom an allocation is required to be made.

(iv) No allocation is made to the 10 regular interest holders pursuant to paragraph (a) of this section. In addition, the interests held by these interest holders are not taken into account for purposes of determining the proportionate share of the residual interest holders to whom an allocation is required to be made.

(e) *Allocable investment expenses not subject to backup withholding*. The amount of allocable investment expenses required to be allocated to a pass-through interest holder pursuant to paragraph (a)(1) of this section is not subject to backup withholding under section 3406.

(f) *Notice to pass-through interest holders*—(1) *Information required*. A REMIC must provide to each pass-through interest holder to which an allocation of allocable investment expense is required to be made under paragraph (a)(1) of this section notice of the following—

(i) If, pursuant to paragraph (f)(2) (i) or (ii) of this section, notice is provided for a calendar quarter, the aggregate amount of expenses paid or accrued during the calendar quarter for which the REMIC is allowed a deduction under section 212;

(ii) If, pursuant to paragraph (f)(2)(ii) of this section, notice is provided to a regular interest holder for a calendar year, the aggregate amount of expenses paid or accrued during each calendar quarter that the regular interest holder held the regular interest in the calendar year and for which the REMIC is allowed a deduction under section 212; and

(iii) The proportionate share of these expenses allocated to that pass-through interest holder, as determined under paragraph (c) of this section.

(2) *Statement to be furnished*—(i) *To residual interest holder*. For each calendar quarter, a REMIC shall provide to each pass-through interest holder who holds

a residual interest during the calendar quarter the notice required under paragraph (f)(1) of this section on Schedule Q (Form 1066), as required in §1.860F–4(e).

(ii) *To regular interest holder*—(A) *In general.* For each calendar year, a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) must provide to each pass-through interest holder who held a regular interest during the calendar year the notice required under paragraph (f)(1) of this section. Quarterly reporting is not required. The information required to be included in the notice may be separately stated on the statement described in §1.6049–7(f) instead of on a separate statement provided in a separate mailing. See §1.6049–7(f)(4). The separate statement provided in a separate mailing must be furnished to each pass-through interest holder no later than the last day of the month following the close of the calendar year.

(B) *Special rule for 1987.* The information required under paragraph (f)(2)(ii)(A) of this section for any calendar quarter of 1987 shall be mailed (or otherwise delivered) to each pass-through interest holder who holds a regular interest during that calendar quarter no later than March 28, 1988.

(3) *Returns to the Internal Revenue Service*—(i) *With respect to residual interest holders.* Any REMIC required under paragraphs (f)(1) and (2)(i) of this section to furnish information to any pass-through interest holder who holds a residual interest shall also furnish such information to the Internal Revenue Service as required in §1.860F–4(e)(4).

(ii) *With respect to regular interest holders.* A single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section) shall make an information return on Form 1099 for each calendar year beginning after December 31, 1987, with respect to each pass-through interest holder who holds a regular interest to which an allocation of allocable investment expenses is required to be made pursuant to paragraphs (a)(1) and (2)(ii) of this section. The preceding sentence applies with respect to a holder for a calendar year only if the REMIC is required to make an information return to the Internal Revenue Service with respect to that holder for that year pursuant to section 6049 and §1.6049–7(b)(2)(i) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(1) and §1.6049–7(b)(2)(i)). The REMIC shall state on the information return—

(A) The sum of—

(*1*) The aggregate amounts includible in gross income as interest (as defined in §1.6049–7(a)(1) (i) and (ii)), for the calendar year, and

(*2*) The sum of the amount of allocable investment expenses required to be allocated to the pass-through interest holder for each calendar quarter during the calendar year pursuant to paragraph (a) of this section, and

(B) Any other information specified by the form or its instructions.

(4) *Interest held by nominees and other specified persons*—(i) *Pass-through interest holder's interest held by a nominee.* If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may make the information return described in paragraphs (f)(3) (i) and (ii) of this section with respect to the nominee in lieu of the pass-through interest holder and may provide the written statement described in paragraphs (f)(2) (i) and (ii) of this section to that nominee in lieu of the pass-through interest holder.

(ii) *Regular interests in a single-class REMIC held by certain persons.* For calendar quarters and calendar years after December 31, 1991, if a person specified in §1.6049–7(e)(4) holds a regular interest in a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section), then the single-class REMIC must provide the information described in paragraphs (f)(1) and (f)(3)(ii) (A) and (B) of this section to that person with the information specified in §1.6049–7(e)(2) as required in §1.6049–7(e).

(5) *Nominee reporting*—(i) *In general.* In any case in which a REMIC provides information pursuant to paragraph (f)(4) of this section to a nominee of a pass-through interest holder for a calendar quarter or, as provided in paragraph (f)(2)(ii) of this section, for a calendar year—

(A) The nominee shall furnish each pass-through interest holder with a written statement described in paragraph (f)(2) (i) or (ii) of this section, whichever is applicable, showing the information described in paragraph (f)(1) of this section, and

(B) If—

(*1*) The nominee is a nominee for a pass-through interest holder who holds a regular interest in a single-class REMIC (as described in paragraph (a)(2)(ii)(B) of this section), and

(*2*) The nominee is required to make an information return pursuant to section 6049 and § 1.6049–7(b)(2)(i) and (b)(2)(ii)(B) (or would be required to make an information return but for the $10 threshold described in section 6049(a)(2) and § 1.6049–7(b)(2)(i)) with respect to the pass-through interest holder,

the nominee shall make an information return on Form 1099 for each calendar year beginning after December 31, 1987, with respect to the pass-through interest holder and state on this information return the information described in paragraph (f)(3)(ii) (A) and (B) of this section.

(ii) *Time for furnishing statement.* The statement required by paragraph (f)(5)(i)(A) of this section to be furnished by a nominee to a pass-through interest holder for a calendar quarter or calendar year shall be furnished to this holder no later than 30 days after receiving the written statement described in paragraph (f)(2) (i) or (ii) of this section from the REMIC. If, however, pursuant to paragraph (f)(2)(ii) of this section, the information is separately stated on the statement described in § 1.6049–7(f), then the information must be furnished to the pass-through interest holder in the time specified in § 1.6049–7(f)(5).

(6) *Special rules*—(i) *Time and place for furnishing returns.* The returns required by paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for any calendar year shall be filed at the time and place that a return required under section 6049 and § 1.6049–7(b)(2) is required to be filed. See § 1.6049–4(g) and § 1.6049–7(b)(2)(iv).

(ii) *Duplicative returns not required.* The requirements of paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for the making of an information return shall be met by the timely filing of an information return pursuant to section 6049 and § 1.6049–7(b)(2) that contains the information required by paragraph (f)(3)(ii) of this section.

[T.D. 8186, 53 FR 7507, Mar. 9, 1988, as amended by T.D. 8366, 56 FR 49515, Sept. 30, 1991]

### § 1.67–4 Costs paid or incurred by estates or non-grantor trusts.

(a) *In general.* Section 67(e) provides an exception to the 2-percent floor on miscellaneous itemized deductions for costs that are paid or incurred in connection with the administration of an estate or a trust not described in § 1.67–2T(g)(1)(i) (a non-grantor trust) and that would not have been incurred if the property were not held in such estate or trust. A cost is subject to the 2-percent floor to the extent that it is included in the definition of miscellaneous itemized deductions under section 67(b), is incurred by an estate or non-grantor trust, and commonly or customarily would be incurred by a hypothetical individual holding the same property.

(b) *''Commonly'' or ''Customarily'' Incurred*—(1) *In general.* In analyzing a cost to determine whether it commonly or customarily would be incurred by a hypothetical individual owning the same property, it is the type of product or service rendered to the estate or non-grantor trust in exchange for the cost, rather than the description of the cost of that product or service, that is determinative. In addition to the types of costs described as commonly or customarily incurred by individuals in paragraphs (b)(2), (3), (4), and (5) of this section, costs that are incurred commonly or customarily by individuals also include, for example, costs incurred in defense of a claim against the estate, the decedent, or the non-grantor trust that are unrelated to the existence, validity, or administration of the estate or trust.

(2) *Ownership costs.* Ownership costs are costs that are chargeable to or incurred by an owner of property simply by reason of being the owner of the property. Thus, for purposes of section 67(e), ownership costs are commonly or customarily incurred by a hypothetical individual owner of such property. Such ownership costs include, but are not limited to, partnership costs

deemed to be passed through to and reportable by a partner if these costs are defined as miscellaneous itemized deductions pursuant to section 67(b), condominium fees, insurance premiums, maintenance and lawn services, and automobile registration and insurance costs. Other expenses incurred merely by reason of the ownership of property may be fully deductible under other provisions of the Code, such as sections 62(a)(4), 162, or 164(a), which would not be miscellaneous itemized deductions subject to section 67(e).

(3) *Tax preparation fees*. Costs relating to all estate and generation-skipping transfer tax returns, fiduciary income tax returns, and the decedent's final individual income tax returns are not subject to the 2-percent floor. The costs of preparing all other tax returns (for example, gift tax returns) are costs commonly and customarily incurred by individuals and thus are subject to the 2-percent floor.

(4) *Investment advisory fees*. Fees for investment advice (including any related services that would be provided to any individual investor as part of an investment advisory fee) are incurred commonly or customarily by a hypothetical individual investor and therefore are subject to the 2-percent floor. However, certain incremental costs of investment advice beyond the amount that normally would be charged to an individual investor are not subject to the 2-percent floor. For this purpose, such an incremental cost is a special, additional charge that is added solely because the investment advice is rendered to a trust or estate rather than to an individual or attributable to an unusual investment objective or the need for a specialized balancing of the interests of various parties (beyond the usual balancing of the varying interests of current beneficiaries and remaindermen) such that a reasonable comparison with individual investors would be improper. The portion of the investment advisory fees not subject to the 2-percent floor by reason of the preceding sentence is limited to the amount of those fees, if any, that exceeds the fees normally charged to an individual investor.

(5) *Appraisal fees*. Appraisal fees incurred by an estate or a non-grantor trust to determine the fair market value of assets as of the decedent's date of death (or the alternate valuation date), to determine value for purposes of making distributions, or as otherwise required to properly prepare the estate's or trust's tax returns, or a generation-skipping transfer tax return, are not incurred commonly or customarily by an individual and thus are not subject to the 2-percent floor. The cost of appraisals for other purposes (for example, insurance) is commonly or customarily incurred by individuals and is subject to the 2-percent floor.

(6) *Certain fiduciary expenses*. Certain other fiduciary expenses are not commonly or customarily incurred by individuals, and thus are not subject to the 2-percent floor. Such expenses include without limitation the following: Probate court fees and costs; fiduciary bond premiums; legal publication costs of notices to creditors or heirs; the cost of certified copies of the decedent's death certificate; and costs related to fiduciary accounts.

(c) *Bundled fees*—(1) *In general*. If an estate or a non-grantor trust pays a single fee, commission, or other expense (such as a fiduciary's commission, attorney's fee, or accountant's fee) for both costs that are subject to the 2-percent floor and costs (in more than a de minimis amount) that are not, then, except to the extent provided otherwise by guidance published in the Internal Revenue Bulletin, the single fee, commission, or other expense (bundled fee) must be allocated, for purposes of computing the adjusted gross income of the estate or non-grantor trust in compliance with section 67(e), between the costs that are subject to the 2-percent floor and those that are not.

(2) *Exception*. If a bundled fee is not computed on an hourly basis, only the portion of that fee that is attributable to investment advice is subject to the 2-percent floor; the remaining portion is not subject to that floor.

(3) *Expenses not subject to allocation*. Out-of-pocket expenses billed to the estate or non-grantor trust are treated as separate from the bundled fee. In addition, payments made from the bundled fee to third parties that would have been subject to the 2-percent floor if

they had been paid directly by the estate or non-grantor trust are subject to the 2-percent floor, as are any fees or expenses separately assessed by the fiduciary or other payee of the bundled fee (in addition to the usual or basic bundled fee) for services rendered to the estate or non-grantor trust that are commonly or customarily incurred by an individual.

(4) *Reasonable method.* Any reasonable method may be used to allocate a bundled fee between those costs that are subject to the 2-percent floor and those costs that are not, including without limitation the allocation of a portion of a fiduciary commission that is a bundled fee to investment advice. Facts that may be considered in determining whether an allocation is reasonable include, but are not limited to, the percentage of the value of the corpus subject to investment advice, whether a third party advisor would have charged a comparable fee for similar advisory services, and the amount of the fiduciary's attention to the trust or estate that is devoted to investment advice as compared to dealings with beneficiaries and distribution decisions and other fiduciary functions. The reasonable method standard does not apply to determine the portion of the bundled fee attributable to payments made to third parties for expenses subject to the 2-percent floor or to any other separately assessed expense commonly or customarily incurred by an individual, because those payments and expenses are readily identifiable without any discretion on the part of the fiduciary or return preparer.

(d) *Effective/applicability date.* This section applies to taxable years beginning after December 31, 2014.

[T.D. 9664, 79 FR 26619, May 9, 2014, as revised at 79 FR 41636, July 17, 2014]

ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

### § 1.71–1 Alimony and separate maintenance payments; income to wife or former wife.

(a) *In general.* Section 71 provides rules for treatment in certain cases of payments in the nature of or in lieu of alimony or an allowance for support as between spouses who are divorced or separated. For convenience, the payee spouse will hereafter in this section be referred to as the "wife" and the spouse from whom she is divorced or separated as the "husband." See section 7701(a)(17). For rules relative to the deduction by the husband of periodic payments not attributable to transferred property, see section 215 and the regulations thereunder. For rules relative to the taxable status of income of an estate or trust in case of divorce, etc., see section 682 and the regulations thereunder.

(b) *Alimony or separate maintenance payments received from the husband*—(1) *Decree of divorce or separate maintenance.* (i) In the case of divorce or legal separation, paragraph (1) of section 71(a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her after a decree of divorce or of separate maintenance. Such periodic payments must be made in discharge of a legal obligation imposed upon or incurred by the husband because of the marital or family relationship under a court order or decree divorcing or legally separating the husband and wife or a written instrument incident to the divorce status or legal separation status.

(ii) For treatment of payments attributable to property transferred (in trust or otherwise), see paragraph (c) of this section.

(2) *Written separation agreement.* (i) Where the husband and wife are separated and living apart and do not file a joint income tax return for the taxable year, paragraph (2) of section 71(a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her pursuant to a written separation agreement executed after August 16, 1954. The periodic payments must be made under the terms of the written separation agreement after its execution and because of the marital or family relationship. Such payments are includable in the wife's gross income whether or not the agreement is a legally enforceable instrument. Moreover, if the wife is divorced or legally separated subsequent to the

written separation agreement, payments made under such agreement continue to fall within the provisions of section 71(a)(2).

(ii) For purposes of section 71(a)(2) any written separation agreement executed on or before August 16, 1954, which is altered or modified in writing by the parties in any material respect after that date will be treated as an agreement executed after August 16, 1954, with respect to payments made after the date of alteration or modification.

(iii) For treatment of payments attributable to property transferred (in trust or otherwise), see paragraph (c) of this section.

(3) *Decree for support.* (i) Where the husband and wife are separated and living apart and do not file a joint income tax return for the taxable year, paragraph (3) of section 71(a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her after August 16, 1954, from her husband under any type of court order or decree (including an interlocutory decree of divorce or a decree of alimony pendente lite) entered after March 1, 1954, requiring the husband to make the payments for her support or maintenance. It is not necessary for the wife to be legally separated or divorced from her husband under a court order or decree; nor is it necessary for the order or decree for support to be for the purpose of enforcing a written separation agreement.

(ii) For purposes of section 71(a)(3), any decree which is altered or modified by a court order entered after March 1, 1954, will be treated as a decree entered after such date.

(4) *Scope of section 71(a).* Section 71(a) applies only to payments made because of the family or marital relationship in recognition of the general obligation to support which is made specific by the decree, instrument, or agreement. Thus, section 71(a) does not apply to that part of any periodic payment which is attributable to the repayment by the husband of, for example, a bona fide loan previously made to him by the wife, the satisfaction of which is specified in the decree, instrument, or agreement as a part of the general settlement between the husband and wife.

(5) *Year of inclusion.* Periodic payments are includible in the wife's income under section 71(a) only for the taxable year in which received by her. As to such amounts, the wife is to be treated as if she makes her income tax returns on the cash receipts and disbursements method, regardless of whether she normally makes such returns on the accrual method. However, if the periodic payments described in section 71(a) are to be made by an estate or trust, such periodic payments are to be included in the wife's taxable year in which they are includible according to the rules as to income of estates and trusts provided in sections 652, 662, and 682, whether or not such payments are made out of the income of such estates or trusts.

(6) *Examples.* The foregoing rules are illustrated by the following examples in which it is assumed that the husband and wife file separate income tax returns on the calendar year basis:

*Example 1.* W files suit for divorce from H in 1953. In consideration of W's promise to relinquish all marital rights and not to make public H's financial affairs, H agrees in writing to pay $200 a month to W during her lifetime if a final decree of divorce is granted without any provision for alimony. Accordingly, W does not request alimony and no provision for alimony is made under a final decree of divorce entered December 31, 1953. During 1954, H pays W $200 a month, pursuant to the promise. The $2,400 thus received by W is includible in her gross income under the provisions of section 71(a)(1). Under section 215, H is entitled to a deduction of $2,400 from his gross income.

*Example 2.* During 1945, H and W enter into an antenuptial agreement, under which, in consideration of W's relinquishment of all marital rights (including dower) in H's property, and, in order to provide for W's support and household expenses, H promises to pay W $200 a month during her lifetime. Ten years after their marriage, W sues H for divorce but does not ask for or obtain alimony because of the provision already made for her support in the antenuptial agreement. Likewise, the divorce decree is silent as to such agreement and H's obligation to support W. Section 71(a) does not apply to such a case. If, however, the decree were modified so as to refer to the antenuptial agreement, or if reference had been made to the antenuptial agreement in the court's decree or in a written instrument incident to the divorce status, section 71(a)(1) would require the inclusion in W's gross income of the payments received by her after the decree. Similarly, if a written separation agreement were executed after August 16, 1954, and incorporated the payment provisions of the antenuptial agreement, section 71(a)(2) would require the inclusion in W's income of payments received by W after W begins living apart from H, whether or not the divorce decree was subsequently entered and whether or not W was living apart from H when the separation agreement was executed, provided that such payments were made after such agreement was executed and pursuant to its terms. As to including such payments in W's income, if made by a trust created under the antenuptial agreement, regardless of whether referred to in the decree or a later instrument, or created pursuant to the written separation agreement, see section 682 and the regulations thereunder.

*Example 3.* H and W are separated and living apart during 1954. W sues H for support and on February 1, 1954, the court enters a decree requiring H to pay $200 a month to W for her support and maintenance. No part of the $200 a month support payments is includible in W's income under section 71(a)(3) or deductible by H under section 215. If, however, the decree had been entered after March 1, 1954, or had been altered or modified by a court order entered after March 1, 1954, the payments received by W after August 16, 1954, under the decree as altered or modified would be includible in her income under section 71(a)(3) and deductible by H under section 215.

*Example 4.* W sues H for divorce in 1954. On January 15, 1954, the court awards W temporary alimony of $25 a week pending the final decree. On September 1, 1954, the court grants W a divorce and awards her $200 a month permanent alimony. No part of the $25 a week temporary alimony received prior to the decree is includible in W's income under section 71(a), but the $200 a month received during the remainder of 1954 by W is includible in her income for 1954. Under section 215, H is entitled to deduct such $200 payments from his income. If, however, the decree awarding W temporary alimony had been entered after March 1, 1954, or had been altered or modified by a court order entered after March 1, 1954, temporary alimony received by her after August 16, 1954, would be includible in her income under section 71(a)(3) and deductible by H under section 215.

(c) *Alimony and separate maintenance payments attributable to property.* (1)(i) In the case of divorce or legal separation, paragraph (1) of section 71(a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) attributable to property transferred, in trust or otherwise, and received by her after a decree of divorce or of separate maintenance. Such property must have been transferred in discharge of a legal obligation imposed upon or incurred by the husband because of the marital or family relationship under a decree of divorce or separate maintenance or under a written instrument incident to such divorce status or legal separation status.

(ii) Where the husband and wife are separated and living apart and do not file a joint income tax return for the taxable year, paragraph (2) of section 71(a) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her which are attributable to property transferred, in trust or otherwise, under a written separation agreement executed after August 16, 1954. The property must be transferred because of the marital or family relationship. The periodic payments attributable to the property must be received by the wife after the written separation agreement is executed.

(iii) The periodic payments received by the wife attributable to property transferred under subdivisions (i) and (ii) of this subparagraph and includible in her gross income are not to be included in the gross income of the husband.

(2) The full amount of periodic payments received under the circumstances described in section 71(a) (1), (2), and (3) is required to be included in the gross income of the wife regardless of the source of such payments. Thus, it matters not that such payments are attributable to property in trust, to life insurance, endowment, or annuity contracts, or to any other interest in property, or are paid directly or indirectly by the husband from his income or capital. For example, if in order to meet an alimony or separate maintenance obligation of $500 a month the husband purchases or assigns for the benefit of his wife a commercial annuity contract paying such amount, the full $500 a month received by the wife is includible in her

income, and no part of such amount is includible in the husband's income or deductible by him. See section 72(k) and the regulations thereunder. Likewise, if property is transferred by the husband, subject to an annual charge of $5,000, payable to his wife in discharge of his alimony or separate maintenance obligation under the divorce or separation decree or written instrument incident to the divorce status or legal separation status or if such property is transferred pursuant to a written separation agreement and subject to a similar annual charge, the $5,000 received annually is, under section 71(a) (1) or (2), includible in the wife's income, regardless of whether such amount is paid out of income or principal of the property.

(3) The same rule applies to periodic payments attributable to property in trust. The full amount of periodic payments to which section 71(a) (1) and (2) applies is includible in the wife's income regardless of whether such payments are made out of trust income. Such periodic payments are to be included in the wife's income under section 71(a) (1) or (2) and are to be excluded from the husband's income even though the income of the trust would otherwise be includible in his income under Subpart E, Part I, Subchapter J, Chapter 1 of the Code, relating to trust income attributable to grantors and others as substantial owners. As to periodic payments received by a wife attributable to property in trust in cases to which section 71(a) (1) or (2) does not apply because the husband's obligation is not specified in the decree or an instrument incident to the divorce status or legal separation status or the property was not transferred under a written separation agreement, see section 682 and the regulations thereunder.

(4) Section 71(a) (1) or (2) does not apply to that part of any periodic payment attributable to that portion of any interest in property transferred in discharge of the husband's obligation under the decree or instrument incident to the divorce status or legal separation status, or transferred pursuant to the written separation agreement, which interest originally belonged to the wife. It will apply, however, if she received such interest from her husband in contemplation of or as an incident to the divorce or separation without adequate and full consideration in money or money's worth, other than the release of the husband or his property from marital obligations. An example of the first rule is a case where the husband and wife transfer securities, which were owned by them jointly, in trust to pay an annuity to the wife. In this case, the full amount of that part of the annuity received by the wife attributable to the husband's interest in the securities transferred in discharge of his obligation under the decree, or instrument incident to the divorce status or legal separation status, or transferred under the written separation agreement, is taxable to her under section 71(a) (1) or (2), while that portion of the annuity attributable to the wife's interest in the securities so transferred is taxable to her only to the extent it is out of trust income as provided in Part I (sections 641 and following), Subchapter J, Chapter 1 of the Code. If, however, the husband's transfer to his wife is made before such property is transferred in discharge of his obligation under the decree or written instrument, or pursuant to the separation agreement in an attempt to avoid the application of section 71(a) (1) or (2) to part of such payments received by his wife, such transfers will be considered as a part of the same transfer by the husband of his property in discharge of his obligation or pursuant to such agreement. In such a case, section 71(a) (1) or (2) will be applied to the full amount received by the wife. As to periodic payments received under a joint purchase of a commercial annuity contract, see section 72 and the regulations thereunder.

(d) *Periodic and installment payments.* (1) In general, installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree, instrument, or agreement are not considered ''periodic payments'' and therefore are not to be included under section 71(a) in the wife's income.

(2) An exception to the general rule stated in subparagraph (1) of this paragraph is provided, however, in cases where such principal sum, by the terms

of the decree, instrument, or agreement, may be or is to be paid over a period ending more than 10 years from the date of such decree, instrument, or agreement. In such cases, the installment payment is considered a periodic payment for the purposes of section 71(a) but only to the extent that the installment payment, or sum of the installment payments, received during the wife's taxable year does not exceed 10 percent of the principal sum. This 10-percent limitation applies to installment payments made in advance but does not apply to delinquent installment payments for a prior taxable year of the wife made during her taxable year.

(3)(i) Where payments under a decree, instrument, or agreement are to be paid over a period ending 10 years or less from the date of such decree, instrument, or agreement, such payments are not installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree, instrument, or agreement (and are considered periodic payments for the purposes of section 71(a)) only if such payments meet the following two conditions:

(*a*) Such payments are subject to any one or more of the contingencies of death of either spouse, remarriage of the wife, or change in the economic status of either spouse, and

(*b*) Such payments are in the nature of alimony or an allowance for support.

(ii) Payments meeting the requirements of subdivision (i) are considered periodic payments for the purposes of section 71(a) regardless of whether—

(*a*) The contingencies described in subdivision (i)(*a*) of this subparagraph are set forth in the terms of the decree, instrument, or agreement, or are imposed by local law, or

(*b*) The aggregate amount of the payments to be made in the absence of the occurrence of the contingencies described in subdivision (i)(*a*) of this subparagraph is explicitly stated in the decree, instrument, or agreement or may be calculated from the face of the decree, instrument, or agreement, or

(*c*) The total amount which will be paid may be calculated actuarially.

(4) Where payments under a decree, instrument, or agreement are to be paid over a period ending more than ten years from the date of such decree, instrument, or agreement, but where such payments meet the conditions set forth in subparagraph (3)(i) of this paragraph, such payments are considered to be periodic payments for the purpose of section 71 without regard to the rule set forth in subparagraph (2) of this paragraph. Accordingly, the rules set forth in subparagraph (2) of this paragraph are not applicable to such payments.

(5) The rules as to periodic and installment payments are illustrated by the following examples:

*Example 1.* Under the terms of a written instrument, H is required to make payments to W which are in the nature of alimony, in the amount of $100 a month for nine years. The instrument provides that if H or W dies the payments are to cease. The payments are periodic.

*Example 2.* The facts are the same as in example (1) except that the written instrument explicitly provides that H is to pay W the sum of $10,800 in monthly payments of $100 over a period of nine years. The payments are periodic.

*Example 3.* Under the terms of a written instrument, H is to pay W $100 a month over a period of nine years. The monthly payments are not subject to any of the contingencies of death of H or W, remarriage of W, or change in the economic status of H or W under the terms of the written instrument or by reason of local law. The payments are not periodic.

*Example 4.* A divorce decree in 1954 provides that H is to pay W $20,000 each year for the next five years, beginning with the date of the decree, and then $5,000 each year for the next ten years. Assuming the wife makes her returns on the calendar year basis, each payment received in the years 1954 to 1958, inclusive, is treated as a periodic payment under section 71(a)(1), but only to the extent of 10 percent of the principal sum of $150,000. Thus, for such taxable years, only $15,000 of the $20,000 received is includible under section 71(a)(1) in the wife's income and is deductible by the husband under section 215. For the years 1959 to 1968, inclusive, the full $5,000 received each year by the wife is includible in her income and is deductible from the husband's income.

(e) *Payments for support of minor children.* Section 71(a) does not apply to that part of any periodic payment which, by the terms of the decree, instrument, or agreement under section 71(a), is specifically designated as a sum payable for the support of minor children of the husband. The statute prescribes the treatment in cases where an amount or portion is so fixed but the amount of any periodic payment is less than the amount of the periodic payment specified to be made. In such cases, to the extent of the amount which would be payable for the support of such children out of the originally specified periodic payment, such periodic payment is considered a payment for such support. For example, if the husband is by terms of the decree, instrument, or agreement required to pay $200 a month to his divorced wife, $100 of which is designated by the decree, instrument, or agreement to be for the support of their minor children, and the husband pays only $150 to his wife, $100 is nevertheless considered to be a payment by the husband for the support of the children. If, however, the periodic payments are received by the wife for the support and maintenance of herself and of minor children of the husband without such specific designation of the portion for the support of such children, then the whole of such amounts is includible in the income of the wife as provided in section 71(a). Except in cases of a designated amount or portion for the support of the husband's minor children, periodic payments described in section 71(a) received by the wife for herself and any other person or persons are includible in whole in the wife's income, whether or not the amount or portion for such other person or persons is designated.

### § 1.71–1T Alimony and separate maintenance payments (temporary).

(a) *In general.*

Q–1 What is the income tax treatment of alimony or separate maintenance payments?

A–1 Alimony or separate maintenance payments are, under section 71, included in the gross income of the payee spouse and, under section 215, allowed as a deduction from the gross income of the payor spouse.

Q–2 What is an alimony or separate maintenance payment?

A–2 An alimony or separate maintenance payment is any payment received by or on behalf of a spouse (which for this purpose includes a former spouse) of the payor under a divorce or separation instrument that meets all of the following requirements:

(a) The payment is in cash (see A–5).

(b) The payment is not designated as a payment which is excludible from the gross income of the payee and nondeductible by the payor (see A–8).

(c) In the case of spouses legally separated under a decree of divorce or separate maintenance, the spouses are not members of the same household at the time the payment is made (see A–9).

(d) The payor has no liability to continue to make any payment after the death of the payee (or to make any payment as a substitute for such payment) and the divorce or separation instrument states that there is no such liability (see A–10).

(e) The payment is not treated as child support (see A–15).

(f) To the extent that one or more annual payments exceed $10,000 during any of the 6-post-separation years, the payor is obligated to make annual payments in each of the 6-post-separation years (see A–19).

Q–3 In order to be treated as alimony or separate maintenance payments, must the payments be ''periodic'' as that term was defined prior to enactment of the Tax Reform Act of 1984 or be made in discharge of a legal obligation of the payor to support the payee arising out of a marital or family relationship?

A–3 No. The Tax Reform Act of 1984 replaces the old requirements with the requirements described in A–2 above. Thus, the requirements that alimony or separate maintenance payments be ''periodic'' and be made in discharge of a legal obligation to support arising out of a marital or family relationship have been eliminated.

Q–4 Are the instruments described in section 71(a) of prior law the same as divorce or separation instruments described in section 71, as amended by the Tax Reform Act of 1984?

A–4 Yes.

(b) *Specific requirements.*

Q–5 May alimony or separate maintenance payments be made in a form other than cash?

A–5 No. Only cash payments (including checks and money orders payable on demand) qualify as alimony or separate maintenance payments. Transfers of services or property (including a debt instrument of a third party or an annuity contract), execution of a debt instrument by the payor, or the use of property of the payor do not qualify as alimony or separate maintenance payments.

Q–6 May payments of cash to a third party on behalf of a spouse qualify as alimony or separate maintenance payments if the payments are pursuant to the terms of a divorce or separation instrument?

A–6 Yes. Assuming all other requirements are satisfied, a payment of cash by the payor spouse to a third party under the terms of the divorce or separation instrument will qualify as a payment of cash which is received ''on behalf of a spouse''. For example, cash payments of rent, mortgage, tax, or tuition liabilities of the payee spouse made under the terms of the divorce or separation instrument will qualify as alimony or separate maintenance payments. Any payments to maintain property owned by the payor spouse and used by the payee spouse (including mortgage payments, real estate taxes and insurance premiums) are not payments on behalf of a spouse even if those payments are made pursuant to the terms of the divorce or separation instrument. Premiums paid by the payor spouse for term or whole life insurance on the payor's life made under the terms of the divorce or separation instrument will qualify as payments on behalf of the payee spouse to the extent that the payee spouse is the owner of the policy.

Q–7 May payments of cash to a third party on behalf of a spouse qualify as alimony or separate maintenance payments if the payments are made to the third party at the written request of the payee spouse?

A–7 Yes. For example, instead of making an alimony or separate maintenance payment directly to the payee, the payor spouse may make a cash payment to a charitable organization if such payment is pursuant to the written request, consent or ratification of the payee spouse. Such request, consent or ratification must state that the parties intend the payment to be treated as an alimony or separate maintenance payment to the payee spouse subject to the rules of section 71, and must be received by the payor spouse prior to the date of filing of the payor's first return of tax for the taxable year in which the payment was made.

Q–8 How may spouses designate that payments otherwise qualifying as alimony or separate maintenance payments shall be excludible from the gross income of the payee and nondeductible by the payor?

A–8 The spouses may designate that payments otherwise qualifying as alimony or separate maintenance payments shall be nondeductible by the payor and excludible from gross income by the payee by so providing in a divorce or separation instrument (as defined in section 71(b)(2)). If the spouses have executed a written separation agreement (as described in section 71(b)(2)(B)), any writing signed by both spouses which designates otherwise qualifying alimony or separate maintenance payments as nondeductible and excludible and which refers to the written separation agreement will be treated as a written separation agreement (and thus a divorce or separation instrument) for purposes of the preceding sentence. If the spouses are subject to temporary support orders (as described in section 71(b)(2)(C)), the designation of otherwise qualifying alimony or separate payments as nondeductible and excludible must be made in the original or a subsequent temporary support order. A copy of the instrument containing the designation of payments as not alimony or separate maintenance payments must be attached to the payee's first filed return of tax (Form 1040) for each year in which the designation applies.

Q–9 What are the consequences if, at the time a payment is made, the payor and payee spouses are members of the same household?

A–9 Generally, a payment made at the time when the payor and payee spouses are members of the same household cannot qualify as an alimony or separate maintenance payment if the spouses are legally separated under a decree of divorce or of separate maintenance. For purposes of the preceding sentence, a dwelling unit formerly shared by both spouses shall not be considered two separate households even if the spouses physically separate themselves within the dwelling unit. The spouses will not be treated as members of the same household if one spouse is preparing to depart from the household of the other spouse, and does depart not more than one month after the date the payment is made. If the spouses are not legally separated under a decree of divorce or separate maintenance, a payment under a written separation agreement or a decree described in section 71(b)(2)(C) may qualify as an alimony or separate maintenance payment notwithstanding that the payor and payee are members of the same household at the time the payment is made.

Q–10 Assuming all other requirements relating to the qualification of certain payments as alimony or separate maintenance payments are met, what are the consequences if the payor spouse is required to continue to make the payments after the death of the payee spouse?

A–10 None of the payments before (or after) the death of the payee spouse qualify as alimony or separate maintenance payments.

Q–11 What are the consequences if the divorce or separation instrument fails to state that there is no liability for any period after the death of the payee spouse to continue to make any payments which would otherwise qualify as alimony or separate maintenance payments?

A–11 If the instrument fails to include such a statement, none of the payments, whether made before or after the death of the payee spouse, will qualify as alimony or separate maintenance payments.

*Example 1.* A is to pay B $10,000 in cash each year for a period of 10 years under a divorce or separation instrument which does not state that the payments will terminate upon the death of B. None of the payments will qualify as alimony or separate maintenance payments.

*Example 2.* A is to pay B $10,000 in cash each year for a period of 10 years under a divorce or separation instrument which states that the payments will terminate upon the death of B. In addition, under the instrument, A is to pay B or B's estate $20,000 in cash each year for a period of 10 years. Because the $20,000 annual payments will not terminate upon the death of B, these payments will not qualify as alimony or separate maintenance payments. However, the separate $10,000 annual payments will qualify as alimony or separate maintenance payments.

Q–12 Will a divorce or separation instrument be treated as stating that there is no liability to make payments after the death of the payee spouse if the liability to make such payments terminates pursuant to applicable local law or oral agreement?

A–12 No. Termination of the liability to make payments must be stated in the terms of the divorce or separation instrument.

Q–13 What are the consequences if the payor spouse is required to make one or more payments (in cash or property) after the death of the payee spouse as a substitute for the continuation of pre-death payments which would otherwise qualify as alimony or separate maintenance payments?

A–13 If the payor spouse is required to make any such substitute payments, none of the otherwise qualifying payments will qualify as alimony or separate maintenance payments. The divorce or separation instrument need not state, however, that there is no liability to make any such substitute payment.

Q–14 Under what circumstances will one or more payments (in cash or property) which are to occur after the death of the payee spouse be treated as a substitute for the continuation of payments which would otherwise qualify as alimony or separate maintenance payments?

A–14 To the extent that one or more payments are to begin to be made, increase in amount, or become accelerated in time as a result of the death of the payee spouse, such payments may be treated as a substitute for the continuation of payments terminating on the death of the payee spouse which would otherwise qualify as alimony or separate maintenance payments. The determination of whether or not such payments are a substitute for the continuation of payments which would otherwise qualify as alimony or separate maintenance payments, and of the amount of the otherwise qualifying alimony or separate maintenance payments for which any such payments are a substitute, will depend on all of the facts and circumstances.

*Example 1.* Under the terms of a divorce decree, A is obligated to make annual alimony payments to B of $30,000, terminating on the earlier of the expiration of 6 years or the death of B. B maintains custody of the minor children of A and B. The decree provides that at the death of B, if there are minor children of A and B remaining, A will be obligated to make annual payments of $10,000 to a trust, the income and corpus of which are to be used for the benefit of the children until the youngest child attains the age of majority. These facts indicate that A's liability to make annual $10,000 payments in trust for the benefit of his minor children upon the death of B is a substitute for $10,000 of the $30,000 annual payments to B. Accordingly, $10,000 of each of the $30,000 annual payments to B will not qualify as alimony or separate maintenance payments.

*Example 2.* Under the terms of a divorce decree, A is obligated to make annual alimony payments to B of $30,000, terminating on the earlier of the expiration of 15 years or the death of B. The divorce decree provides that if B dies before the expiration of the 15 year period, A will pay to B's estate the difference between the total amount that A would have paid had B survived, minus the amount actually paid. For example, if B dies at the end of the 10th year in which payments are made, A will pay to B's estate $150,000 ($450,000–$300,000). These facts indicate that A's liability to make a lump sum payment to B's estate upon the death of B is a substitute for the full amount of each of the annual $30,000 payments to B. Accordingly, none of the annual $30,000 payments to B will qualify as alimony or separate maintenance payments. The result would be the same if the lump sum payable at B's death were discounted by an appropriate interest factor to account for the prepayment.

(c) *Child support payments.*

Q–15 What are the consequences of a payment which the terms of the divorce or separation instrument fix as payable for the support of a child of the payor spouse?

A–15 A payment which under the terms of the divorce or separation instrument is fixed (or treated as fixed) as payable for the support of a child of the payor spouse does not qualify as an alimony or separate maintenance payment. Thus, such a payment is not deductible by the payor spouse or includible in the income of the payee spouse.

Q–16 When is a payment fixed (or treated as fixed) as payable for the support of a child of the payor spouse?

A–16 A payment is fixed as payable for the support of a child of the payor spouse if the divorce or separation instrument specifically designates some sum or portion (which sum or portion may fluctuate) as payable for the support of a child of the payor spouse. A payment will be treated as fixed as payable for the support of a child of the payor spouse if the payment is reduced (a) on the happening of a contingency relating to a child of the payor, or (b) at a time which can clearly be associated with such a contingency. A payment may be treated as fixed as payable for the support of a child of the payor spouse even if other separate payments specifically are designated as payable for the support of a child of the payor spouse.

Q–17 When does a contingency relate to a child of the payor?

A–17 For this purpose, a contingency relates to a child of the payor if it depends on any event relating to that child, regardless of whether such event is certain or likely to occur. Events that relate to a child of the payor include the following: the child's attaining a specified age or income level, dying, marrying, leaving school, leaving the spouse's household, or gaining employment.

Q–18 When will a payment be treated as to be reduced at a time which can clearly be associated with the happening of a contingency relating to a child of the payor?

A–18 There are two situations, described below, in which payments which would otherwise qualify as alimony or separate maintenance payments will be presumed to be reduced at a time clearly associated with the happening of a contingency relating to a child of the payor. In all other situations, reductions in payments will not be treated as clearly associated with the happening of a contingency relating to a child of the payor.

The first situation referred to above is where the payments are to be reduced not more than 6 months before or after the date the child is to attain the age of 18, 21, or local age of majority. The second situation is where the payments are to be reduced on two or more occasions which occur not more than one year before or after a different child of the payor spouse attains a certain age between the ages of 18 and 24, inclusive. The certain age referred to in the preceding sentence must be the same for each such child, but need not be a whole number of years.

The presumption in the two situations described above that payments are to be reduced at a time clearly associated with the happening of a contingency relating to a child of the payor may be rebutted (either by the Service or by taxpayers) by showing that the time at which the payments are to be reduced was determined independently of any contingencies relating to the children of the payor. The presumption in the first situation will be rebutted conclusively if the reduction is a complete cessation of alimony or separate maintenance payments during the sixth post-separation year (described in A–21) or upon the expiration of a 72-month period. The presumption may also be rebutted in other circumstances, for example, by showing that alimony payments are to be made for a period customarily provided in the local jurisdiction, such as a period equal to one-half the duration of the marriage.

*Example:* A and B are divorced on July 1, 1985, when their children, C (born July 15, 1970) and D (born September 23, 1972), are 14 and 12, respectively. Under the divorce decree, A is to make alimony payments to B of $2,000 per month. Such payments are to be reduced to $1,500 per month on January 1, 1991 and to $1,000 per month on January 1, 1995. On January 1, 1991, the date of the first reduction in payments, C will be 20 years 5 months and 17 days old. On January 1, 1995, the date of the second reduction in payments, D will be 22 years 3 months and 9 days old. Each of the reductions in payments is to occur not more than one year before or after a different child of A attains the age of 21 years and 4 months. (Actually, the reductions are to occur not more than one year before or after C and D attain *any* of the ages 21 years 3 months and 9 days through 21 years 5 months and 17 days.) Accordingly, the reductions will be presumed to clearly be associated with the happening of a contingency relating to C and D. Unless this presumption is rebutted, payments under the divorce decree equal to the sum of the reduction ($1,000 per month) will be treated as fixed for the support of the children of A and therefore will not qualify as alimony or separate maintenance payments.

(d) *Excess front-loading rules.*

Q–19 What are the excess front-loading rules?

A–19 The excess front-loading rules are two special rules which may apply to the extent that payments in any calendar year exceed $10,000. The first rule is a minimum term rule, which must be met in order for any annual payment, to the extent in excess of $10,000, to qualify as an alimony or separate maintenance payment (see A–2(f)). This rule requires that alimony or separate maintenance payments be called for, at a minimum, during the 6 ''post-separation years''. The second rule is a recapture rule which characterizes payments retrospectively by requiring a recalculation and inclusion in income by the payor and deducation by the payee of previously paid alimony or separate maintenance payment to the extent that the amount of such payments during any of the 6 ''post-separation years'' falls short of the amount of payments during a prior year by more than $10,000.

Q–20 Do the excess front-loading rules apply to payments to the extent that annual payments never exceed $10,000?

A–20 No. For example, A is to make a single $10,000 payment to B. Provided that the other requirements of section 71 are met, the payment will qualify as an alimony or separate maintenance payment. If A were to make a single $15,000 payment to B, $10,000 of the payment would qualify as an alimony or separate maintenance payment and $5,000 of the payment would be disqualified under the minimum term rule because payments were not to be made for the minimum period.

Q–21 Do the excess front-loading rules apply to payments received under a decree described in section 71(b)(2)(C)?

A–21 No. Payments under decrees described in section 71(b)(2)(C) are to be disregarded entirely for purposes of applying the excess front-loading rules.

Q–22 Both the minimum term rule and the recapture rule refer to 6 ''post-separation years''. What are the 6 ''post separation years''?

A–22 The 6 ''post-separation years'' are the 6 consecutive calendar years beginning with the first calendar year in which the payor pays to the payee an alimony or separate maintenance payment (except a payment made under a decree described in section 71(b)(2)(C)). Each year within this period is referred to as a ''post-separation year''. The 6-year period need not commence with the year in which the spouses separate or divorce, or with the year in which payments under the divorce or separation instrument are made, if no payments during such year qualify as alimony or separate maintenance payments. For example, a decree for the divorce of A and B is entered in October, 1985. The decree requires A to make monthly payments to B commencing November 1, 1985, but A and B are members of the same household until February 15, 1986 (and as a result, the payments prior to January 16, 1986, do not qualify as alimony payments). For purposes of applying the excess front-loading rules to payments from A to B, the 6 calendar years 1986 through 1991 are post-separation years. If a spouse has been making payments pursuant to a divorce or separation instrument described in section 71(b)(2) (A) or (B), a modification of the instrument or the substitution of a new instrument (for example, the substitution of a divorce decree for a written separation agreement) will not result in the creation of additional post-separation years. However, if a spouse has been making payments pursuant to a divorce or separation instrument described in section 71(b)(2)(C), the 6-year period does not begin until the first calendar year in which alimony or separate maintenance payments are made under a divorce or separation instrument described in section 71(b)(2) (A) or (B).

Q–23 How does the minimum term rule operate?

A–23 The minimum term rule operates in the following manner. To the extent payments are made in excess of $10,000, a payment will qualify as an alimony or separate maintenance payment only if alimony or separate maintenance payments are to be made in each of the 6 post-separation years. For example, pursuant to a divorce decree, A is to make alimony payments to B of $20,000 in each of the 5 calendar years 1985 through 1989. A is to make no payment in 1990. Under the minimum term rule, only $10,000 will qualify as an alimony payment in each of the calendar years 1985 through 1989. If the divorce decree also required A to make a $1 payment in 1990, the minimum term rule would be satisfied and $20,000 would be treated as an alimony payment in each of the calendar years 1985 through 1989. The recapture rule would, however, apply for 1990. For purposes of determining whether alimony or separate maintenance payments are to be made in any year, the possible termination of such payments upon the happening of a contingency (other than the passage of time) which has not yet occurred is ignored (unless such contingency may cause all or a portion of the payment to be treated as a child support payment).

Q–24 How does the recapture rule operate?

A–24 The recapture rule operates in the following manner. If the amount of alimony or separate maintenance payments paid in any post-separation year (referred to as the ''computation year'') falls short of the amount of alimony or separate maintenance payments paid in any prior post-separation year by more than $10,000, the payor must compute an ''excess amount'' for the computation year. The excess amount for any computation year is the sum of excess amounts determined with respect to each prior post-separation year. The excess amount determined with respect to a prior post-separation year is the excess of (1) the amount of alimony or separate maintenance payments paid by the payor spouse during such prior post-separation year, over (2) the amount of the alimony or separate maintenance payments paid by the payor spouse during the computation year plus $10,000. For purposes of this calculation, the amount of alimony or separate maintenance payments made by the payor spouse during any post-separation year preceding the computation year is reduced by any excess amount previously determined with respect to such year. The rules set forth above may be illustrated by the following example. A makes alimony payments to B of $25,000 in 1985 and $12,000 in 1986. The excess amount with respect to 1985 that is recaptured in 1986 is $3,000 ($25,000−($12,000+$10,000)). For purposes of subsequent computation years, the amount deemed paid in 1985 is $22,000. If A makes alimony payments to B of $1,000 in 1987, the excess amount that is recaptured in 1987 will be $12,000. This is the sum of an $11,000 excess amount with respect to 1985 ($22,000−$1,000+$10,000)) and a $1,000 excess amount with respect to 1986 ($12,000−($1,000+$10,000)). If, prior to the end of 1990, payments decline further, additional recapture will occur. The payor spouse must include the excess amount in gross income for his/her taxable year begining with or in the computation year. The payee spouse is allowed a deduction for the excess amount in computing adjusted gross income for his/her taxable year beginning with or in the computation year. However, the payee spouse must compute the excess amount by reference to the date when payments were made and not when payments were received.

Q–25 What are the exceptions to the recapture rule?

A–25 Apart from the $10,000 threshold for application of the recapture rule, there are three exceptions to the recapture rule. The first exception is for payments received under temporary support orders described in section 71(b)(2)(C) (see A–21). The second exception is for any payment made pursuant to a continuing liability over the period of the post-separation years to pay a fixed portion of the payor's income from a business or property or from compensation for employment or self-employment. The third exception is where the alimony or separate manitenance payments in any post-separation year cease by reason of the death of the payor or payee or the remarriage (as defined under applicable local law) of the payee before the close of the computation year. For example, pursuant to a divorce decree, A is to make cash payments to B of $30,000 in each of the calendar years 1985 through 1990. A makes cash payments of $30,000 in 1985 and $15,000 in 1986, in which year B remarries and A's alimony payments cease. The recapture rule does not apply for 1986 or any subsequent year. If alimony or separate maintenance payments made by A decline or cease during a post-separation year for any other reason (including a failure by the payor to make timely payments, a modification of the divorce or separation instrument, a reduction in the support needs of the payee, or a reduction in the ability of the payor to provide support) excess amounts with respect to prior post-separation years will be subject to recapture.

(e) *Effective dates.*

Q–26 When does section 71, as amended by the Tax Reform Act of 1984, become effective?

A–26 Generally, section 71, as amended, is effective with respect to divorce or separation instruments (as defined in section 71(b)(2)) executed after December 31, 1984. If a decree of divorce or separate maintenance executed after December 31, 1984, incorporates or adopts without change the terms of the alimony or separate maintenance payments under a divorce or separation instrument executed before January 1, 1985, such decree will be treated as executed before January 1, 1985. A change in the amount of alimony or separate maintenance payments or the time period over which such payments are to continue, or the addition or deletion of any contingencies or conditions relating to such payments is a change in the terms of the alimony or separate maintenance payments. For example, in November 1984, A and B executed a written separation agreement. In February 1985, a decree of divorce is entered in substitution for the written separation agreement. The decree of divorce does not change the terms of the alimony A pays to B. The decree of divorce will be treated as executed before January 1, 1985 and hence alimony payments under the decree will be subject to the rules of section 71 prior to amendment by the Tax Reform Act of 1984. If the amount or time period of the alimony or separate maintenance payments are not specified in the pre-1985 separation agreement or if the decree of divorce changes the amount or term of such payments, the decree of divorce will not be treated as executed before January 1, 1985, and alimony payments under the decree will be subject to the rules of section 71, as amended by the Tax Reform Act of 1984.

Section 71, as amended, also applies to any divorce or separation instrument executed (or treated as executed) before January 1, 1985 that has been modified on or after January 1, 1985, if such modification expressly provides that section 71, as amended by the Tax Reform Act of 1984, shall apply to the instrument as modified. In this case, section 71, as amended, is effective with respect to payments made after the date the instrument is modified.

(Secs. 1041(d)(4) (98 Stat. 798, 26 U.S.C. 1041(d)(4), 152(e)(2)(A) (98 Stat. 802, 26 U.S.C. 152(e)(2)(A), 215(c) (98 Stat. 800, 26 U.S.C. 215(c)) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

[T.D. 7973, 49 FR 34455, Aug. 31, 1984; 49 FR 36645, Sept. 19, 1984]

### § 1.71–2 Effective date; taxable years ending after March 31, 1954, subject to the Internal Revenue Code of 1939.

Pursuant to section 7851(a)(1)(C), the regulations prescribed in § 1.71–1, to the extent that they relate to payments under a written separation agreement executed after August 16, 1954, and to the extent that they relate to payments under a decree for support received after August 16, 1954, under a decree entered after March 1, 1954, shall also apply to taxable years beginning before January 1, 1954, and ending after August 16, 1954, although such years are subject to the Internal Revenue Code of 1939.

### § 1.72–1 Introduction.

(a) *General principle.* Section 72 prescribes rules relating to the inclusion in gross income of amounts received under a life insurance, endowment, or annuity contract unless such amounts are specifically excluded from gross income under other provisions of Chapter 1 of the Code. In general, these rules provide that amounts subject to the provisions of section 72 are includible in the gross income of the recipient except to the extent that they are considered to represent a reduction or return of premiums or other consideration paid.

(b) *Amounts to be considered as a return of premiums.* For the purpose of determining the extent to which amounts received represent a reduction or return of premiums or other consideration paid, the provisions of section 72 distinguish between ''amounts received as an annuity'' and ''amounts not received as an annuity''. In general, ''amounts received as an annuity'' are amounts which are payable at regular intervals over a period of more than one full year from the date on which they are deemed to begin, provided the total of the amounts so payable or the period for which they are to be paid can be determined as of that date. See paragraph (b) (2) and (3) of § 1.72–2. Any other amounts to which the provisions of section 72 apply are considered to be ''amounts not received as an annuity''. See § 1.72–11.

(c) ''*Amounts received as an annuity.*'' (1) In the case of ''amounts received as an annuity'' (other than certain employees' annuities described in section 72(d) and in § 1.72–13), a proportionate part of each amount so received is considered to represent a return of premiums or other consideration paid. The proportionate part of each annuity payment which is thus excludable from gross income is determined by the ratio which the investment in the contract as of the date on which the annuity is deemed to begin bears to the expected return under the contract as of that date. See § 1.72–4.

(2) In the case of employees' annuities of the type described in section 72(d), no amount received as an annuity in a taxable year to which the Internal Revenue Code of 1954 applies is includible in the gross income of a recipient until the aggregate of all amounts received thereunder and excluded from gross income under the applicable income tax law exceeds the consideration contributed (or deemed contributed) by the employee under § 1.72–8. Thereafter, all amounts so received are includible in the gross income of the recipient. See § 1.72–13.

(d) ''*Amounts not received as an annuity*''. In the case of ''amounts not received as an annuity'', if such amounts are received after an annuity has begun and during its continuance, amounts so received are generally includible in the gross income of the recipient. Amounts not received as an annuity which are received at any other time are generally includible in the gross income of the recipient only to the extent that such amounts, when added to all amounts previously received under the contract which were excludable from the gross income of the recipient under the income tax law applicable at the time of receipt, exceed the premiums or other consideration paid (see §1.72–11). However, if the aggregate of premiums or other consideration paid for the contract includes amounts for which a deduction was allowed under section 404 as contributions on behalf of an owner-employee, the amounts received under the circumstances of the preceding sentence shall be includible in gross income until the amount so included equals the amount for which the deduction was so allowed. See paragraph (b) of §1.72–17.

(e) *Classification of recipients.* For the purpose of the regulations under section 72, a recipient shall be considered an ''annuitant'' if he receives amounts under an annuity contract during the period that the annuity payments are to continue, whether for a term certain or during the continuing life or lives of the person or persons whose lives measure the duration of such annuity. However, a recipient shall be considered a ''beneficiary'' rather than an ''annuitant'' if the amounts he receives under a contract are received after the term of the annuity for a life or lives has expired and such amounts are paid by reason of the fact that the contract guarantees that payments of some minimum amount or for some minimum period shall be made. For special rules with respect to beneficiaries, see paragraphs (a)(1)(iii) and (c) of §1.72–11.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6676, 28 FR 10134, Sept. 17, 1963]

### § 1.72–2 Applicability of section.

(a) *Contracts.* (1) The contracts under which amounts paid will be subject to the provisions of section 72 include contracts which are considered to be life insurance, endowment, and annuity contracts in accordance with the customary practice of life insurance companies. For the purposes of section 72, however, it is immaterial whether such contracts are entered into with an insurance company. The term ''endowment contract'' also includes the ''face-amount certificates'' described in section 72(1).

(2) If two or more annuity obligations or elements to which section 72 applies are acquired for a single consideration, such as an obligation to pay an annuity to A for his life accompanied by an obligation to pay an annuity to B for his life, there being a single consideration paid for both obligations (whether paid by one or more persons in equal or different amounts, and whether paid in a single sum or otherwise), such annuity elements shall be considered to comprise a single contract for the purpose of the application of section 72 and the regulations thereunder. For rules relating to the allocation of investment in the contract in the case of annuity elements payable to two or more persons, see paragraph (b) of §1.72–6.

(3)(i) Sections 402 and 403 provide that certain distributions by employees' trusts and certain payments under employee plans are taxable under section 72. For taxable years beginning before January 1, 1964, section 72(e)(3), as in effect before such date, does not apply to such distributions or payments. For purposes of applying section 72 to such distributions and payments (other than those described in subdivision (iii) of this subparagraph), each separate program of the employer consisting of interrelated contributions and benefits shall be considered a single contract. Therefore, all distributions or payments (other than those described in subdivision (iii) of this subparagraph) which are attributable to a separate program of interrelated contributions and benefits are considered as received under a single contract. A separate program of interrelated contributions and benefits may be financed by the purchase from an insurance company of one or more group contracts or one or more individual contracts, or may be financed partly by the purchase of contracts from an insurance company and partly through an investment fund, or may be financed completely through an investment fund. A program may be considered separate for purposes of section 72 although it is only a part of a plan which qualifies under section 401. There may be several trusts under one separate program, or several separate programs may make use of a single trust. See, however, subdivision (iii) of this subparagraph for rules relating to what constitutes a ''contract'' for purposes of applying section 72 to distributions commencing before October 20, 1960.

(ii) The following types of benefits, and the contributions used to provide them, are examples of separate programs of interrelated contributions and benefits:

(*a*) Definitely determinable retirement benefits.

(*b*) Definitely determinable benefits payable prior to retirement in case of disability.

(*c*) Life insurance.

(*d*) Accident and health insurance.

However, retirement benefits and life insurance will be considered part of a single separate program of interrelated contributions and benefits to the extent they are provided under retirement income, endowment, or other contracts providing life insurance protection. See examples (6), (7), and (8) contained in subdivision (iv) of this subparagraph for illustrations of the principles of this subdivision. See, also, §1.72–15 for rules relating to the taxation of amounts received under an employee plan which provides both retirement benefits and accident and health benefits.

(iii) If any amount which is taxable under section 72 by reason of section 402 or 403 is actually distributed or made available to any person under an employees' trust or plan (other than the Civil Service Retirement Act, 5 U.S.C. ch. 14) before October 20, 1960, section 72 shall, notwithstanding any other provisions in this subparagraph, be applied to all the distributions with respect to such person (or his beneficiaries) under such trust or plan (whether received before or after October 20, 1960) as though such distributions were provided under a single contract. For purposes of applying section 72 to distributions to which this subdivision applies, therefore, the term ''contract'' shall be considered to include the entire interest of an employee in each trust or plan described in sections 402 and 403 to the extent that distributions thereunder are subject to the provisions of section 72. Section 72 shall be applied to distributions received under the Civil Service Retirement Act in the manner prescribed in subdivision (i) of this subparagraph (see example (4) in subdivision (iv) of this subparagraph).

(iv) The application of this subparagraph may be illustrated by the following examples:

*Example 1.* On January 1, 1961, X Corporation established a noncontributory profit-sharing plan for its employees providing that the amount standing to the account of each participant will be paid to him at the time of his retirement and also established a contributory pension plan for its employees providing for the payment to each participant of a lifetime pension after retirement. The profit-sharing plan is designed to enable the employees to participate in the profits of X Corporation; the amount of the contributions to it are determined by reference to the profits of X Corporation; and the amount of any distribution is determined by reference to the amount of contributions made on behalf of any participant and the earnings thereon. On the other hand, the pension plan is designed to provide a lifetime pension for a retired employee; the amount of the pension is to be determined by a formula set forth in the plan; and the amount of contributions to the plan is the amount necessary to provide such pensions. In view of the fact that each of these plans constitutes a separate program of interrelated contributions and benefits, the distributions from each shall be treated as received under a separate contract. If these plans had been established before October 20, 1960, then, in the case of an employee who receives a distribution under the plans before October 20, 1960, the determination as to whether that distribution and all subsequent distributions to such employee are received under a single contract or under more than one contract shall be made by applying the rules in subdivision (iii) of this subparagraph. On the other hand, in the case of an employee who does not receive any distribution under these plans before October 20, 1960, the determination as to whether distributions to him are received under a single contract or under more than one contract shall be made in accordance with the rules illustrated by this example.

*Example 2.* On January 1, 1961, Z Corporation established a profit-sharing plan for its employees providing that any employee may make contributions, not in excess of 6 percent of his compensation, to a trust and that the employer would make matching contributions out of profits. Under the plan, a participant may receive a periodic distribution of the amount standing in his account during any period that he is absent from work due to a personal injury or sickness. On separation from service, the participant is entitled to receive a distribution of the balance standing in his account in accordance with one of several options. One option provides for the immediate distribution of one-half of the account and for the periodic distribution of the remaining one-half of the account. In addition, any participant may, after the completion of five years of participation, withdraw any part of his account, but in the case of such a withdrawal, the participant forfeits his rights to participate in the plan for a period of two years. Thus, a participant may receive distributions before separation from service; he may receive a distribution of a lump sum upon separation from service; he may also receive periodic distributions upon separation from service. However, since it is the total amount received under all the options that is interrelated with the contributions to the plan and not the amount received under any one option, this profit-sharing plan consists of only one separate program of interrelated contributions and benefits and all distributions under the plan (regardless of the option under which received) are treated as received under one contract. However, if, instead of providing that the amount standing in an employee's account would be paid to him during any period that he is absent from work due to a personal injury or sickness, the plan provided that a portion of the amount in the employee's account would be used to purchase incidental accident and health insurance, this plan would consist of two separate programs of interrelated contributions and benefits. The accident and health insurance, and the contributions used to purchase it, would be considered as one separate program of interrelated contributions and benefits and, therefore, a separate contract; whereas, the remaining contributions and benefits would be considered another separate program of interrelated contributions and benefits and, consequently, another separate contract.

*Example 3.* On January 1, 1961, N Corporation established a profit-sharing plan for its employees providing that the employees may make contributions, not in excess of 6 percent of their compensation, to a trust and that N Corporation would make matching contributions out of its profits. Under the plan, the employee may elect each year to have his and the employer's contributions for such year placed in either a savings arrangement or a retirement arrangement. Such an election is irrevocable. Under the savings arrangement, contributions to such arrangement for any one year and the earnings thereon will be distributed five years later. The retirement arrangement provides that all contributions thereto and the earnings thereon will be distributed when the employee is separated from the service of N Corporation. Since the distributions under the retirement arrangement are attributable solely to the contributions made to such arrangement and are not affected in any manner by contributions or distributions under the savings arrangement or any other plan, such distributions are treated as received under a separate program of interrelated contributions and benefits. Similarly, since distributions during any year under the savings arrangement are attributable only to contributions to such arrangement made during the fifth preceding year and are not affected in any manner by any other contributions to or distributions from such arrangement or any other plan, the savings arrangement constitutes a series of separate programs of interrelated contributions and benefits. The contributions to the savings arrangement for any year and the distribution in a subsequent year based thereon constitute a separate contract for purposes of section 72.

*Example 4.* The Civil Service Retirement Act (5 U.S.C. Ch. 14) which provides retirement benefits for participating employees, consists of a compulsory program and a voluntary program. Under the compulsory program, all participating employees are required to make certain contributions and, upon retirement, are provided retirement benefits computed on the basis of compensation and length of service. Under the voluntary program, such participating employees are permitted to make contributions in addition to those required under the compulsory program and, upon retirement, are provided additional retirement benefits computed on the basis of their voluntary contributions. Distributions received under the Act constitute distributions from two separate contracts for purposes of section 72. Distributions received under the compulsory program are considered as received under a separate program of interrelated contributions and benefits since they are computed solely under the compulsory program and are not affected by any contributions or distributions under the voluntary program or under any other plan. For similar reasons, distributions which are attributable to the voluntary contributions are considered as received under a separate program of interrelated contributions and benefits.

*Example 5.* On January 1, 1961, M Corporation established a contributory pension plan for its employees and created a trust to which it makes contributions to fund such plan. The plan provides that each participant will receive after age 65 a pension of 1½ percent of his compensation for each year of service performed subsequent to the establishment of such plan. In order to fund part of the benefits under the plan, the trustee purchased a group annuity contract. The remaining part of the benefits are to be paid out of a separate investment fund. This pension plan constitutes a single program of interrelated contributions and benefits and, therefore, all distributions received by an employee under the plan are considered as received under a single contract for purposes of section 72.

*Example 6.* On January 1, 1961, Y Corporation established a noncontributory pension plan (including incidental death benefits) for its employees and created a trust to which it makes contributions to fund such plan. The plan provides that each participant will receive after age 65 a pension of 1½ percent of his compensation for each year of service performed subsequent to the establishment of such plan. In addition, such plan provides for the payment of a death benefit if the employee dies before age 65. The trustee funded the death benefits through the purchase of a group term insurance policy and funded the retirement benefits through the purchase of a group annuity contract. Because of a subsequent change in funding from the deferred annuity method to the deposit administration method, the trustee purchased a second group annuity contract to provide the retirement benefits under the plan accruing after the effective date of the change in method of funding. Thus, retirement benefits distributed to an employee whose service with Y Corporation commenced before the effective date of the change in method of funding will be attributable to both group annuity contracts. This pension plan includes two separate programs of interrelated contributions and benefits. The death benefits, and the contributions required to provide them, are considered as one separate program of interrelated contributions and benefits; whereas, the retirement benefits, and the contributions required to provide them, are considered as another separate program of interrelated contributions and benefits. Therefore, any retirement benefits received by an employee, whether attributable to one or both of the group annuity contracts, shall be considered as received under a single contract for purposes of section 72. In determining the tax treatment of any such retirement benefits under section 72, no amount of the premiums used to purchase the group term insurance policy shall be taken into account, since such premiums, and the death benefits which they purchased, constitute a separate program of interrelated contributions and benefits.

*Example 7.* Assume the same facts as in example (6) except that, in lieu of funding the benefits in the manner described in that example, the trustee purchased individual retirement income contracts from an insurance company. Additional individual retirement income contracts are purchased in order to fund any increase in benefits resulting from increases in salary. Therefore, distributions to a particular employee may be attributable to a single retirement income contract or to more than one such contract. All distributions received by an employee under the pension plan, whether attributable to one or more retirement income contracts and whether made directly from the insurance company to the employee or made through the trustee, are considered as received under a single contract for purposes of section 72. For rules relating to the tax treatment of contributions and distributions under retirement income, endowment, or other life insurance contracts purchased by a trust described in section 401(a) and exempt under section 501(a), see paragraph (a) (2), (3), and (4) of §1.402(a)–1.

*Example 8.* Assume the same facts as in example (6) except that, in lieu of funding the benefits in the manner described in that example, the trustee funded the death benefits and part of the retirement benefits by purchasing individual retirement income contracts from an insurance company. The remaining part of the retirement benefits (such as any increase in benefits resulting from increases in salary) are to be paid out of a separate investment fund. This pension plan includes, with respect to each participant, two separate contracts for purposes of section 72. The retirement income contract purchased by the trust for each participant is a separate program of interrelated contributions and benefits and all distributions attributable to such contract (whether made directly from the insurance company to the employee or made through the trustee) are considered as received under a single contract. For rules relating to the tax treatment of contributions and distributions under retirement income, endowment, or other life insurance contracts purchased by a trust described in section 401(a) and exempt under section 501(a), see paragraph (a) (2), (3), and (4) of §1.402(a)–1. The remaining distributions under the plan are considered as received under another separate program of interrelated contributions and benefits.

(b) *Amounts.* (1)(i) In general, the amounts to which section 72 applies are any amounts received under the contracts described in paragraph (a)(1) of this section. However, if such amounts are specifically excluded from gross income under other provisions of Chapter 1 of the Code, section 72 shall not apply for the purpose of including such amounts in gross income. For example, section 72 does not apply to amounts received under a life insurance contract if such amounts are paid by reason of the death of the insured and are excludable from gross income under section 101(a). See also sections 101(d), relating to proceeds of life insurance paid at a date later than death, and 104(a)(4), relating to compensation for injuries or sickness.

(ii) Section 72 does not exclude from gross income any amounts received under an agreement to hold an amount and pay interest thereon. See paragraph (a) of § 1.72–14. However, section 72 does apply to amounts received by a surviving annuitant under a joint and survivor annuity contract since such amounts are not considered to be paid by reason of the death of an insured. For a special deduction for the estate tax attributable to the inclusion of the value of the interest of a surviving annuitant under a joint and survivor annuity contract in the estate of the deceased primary annuitant, see section 691(d) and the regulations thereunder.

(2) Amounts subject to section 72 in accordance with subparagraph (1) of this paragraph are considered ''amounts received as an annuity'' only in the event that all of the following tests are met:

(i) They must be received on or after the ''annuity starting date'' as that term is defined in paragraph (b) of § 1.72–4;

(ii) They must be payable in periodic installments at regular intervals (whether annually, semiannually, quarterly, monthly, weekly, or otherwise) over a period of more than one full year from the annuity starting date; and

(iii) Except as indicated in subparagraph (3) of this paragraph, the total of the amounts payable must be determinable at the annuity starting date either directly from the terms of the contract or indirectly by the use of either mortality tables or compound interest computations, or both, in conjunction with such terms and in accordance with sound actuarial theory.

For the purpose of determining whether amounts subject to section 72(d) and § 1.72–13 are ''amounts received as an annuity'', however, the provisions of subdivision (i) of this subparagraph shall be disregarded. In addition, the term ''amounts received as an annuity'' does not include amounts received to which the provisions of paragraph (b) or (c) of § 1.72–11 apply, relating to dividends and certain amounts received by a beneficiary in the nature of a refund. If an amount is to be paid periodically until a fund plus interest at a fixed rate is exhausted, but further payments may be made thereafter because of earnings at a higher interest rate, the requirements of subdivision (iii) of this subparagraph are met with respect to the payments determinable at the outset by means of computations involving the fixed interest rate, but any payments received after the expiration of the period determinable by such computations shall be taxable as dividends received after the annuity starting date in accordance with paragraph (b)(2) of § 1.72–11.

(3)(i) Notwithstanding the requirement of subparagraph (2)(iii) of this paragraph, if amounts are to be received for a definite or determinable time (whether for a period certain or for a life or lives) under a contract which provides:

(*a*) That the amount of the periodic payments may vary in accordance with investment experience (as in certain profit-sharing plans), cost of living indices, or similar fluctuating criteria, or

(*b*) For specified payments the value of which may vary for income tax purposes, such as in the case of any annuity payable in foreign currency,

each such payment received shall be considered as an amount received as an annuity only to the extent that it does not exceed the amount computed by dividing the investment in the contract, as adjusted for any refund feature, by the number of periodic payments anticipated during the time that the periodic payments are to be made. If payments are to be made more frequently than annually, the amount so computed shall be multiplied by the number of periodic payments to be made during the taxable year for the purpose of determining the total amount which may be considered received as an annuity during such year. To this extent, the payments received shall be considered to represent a return of premium or other consideration paid and shall be excludable from gross income in the taxable year in which received. See paragraph (d) (2) and (3) of §1.72–4. To the extent that the payments received under the contract during the taxable year exceed the total amount thus considered to be received as an annuity during such year, they shall be considered to be amounts not received as an annuity and shall be included in the gross income of the recipient. See section 72(e) and paragraph (b)(2) of §1.72–11.

(ii) For purposes of subdivision (i) of this subparagraph, the number of periodic payments anticipated during the time payments are to be made shall be determined by multiplying the number of payments to be made each year (*a*) by the number of years payments are to be made, or (*b*) if payments are to be made for a life or lives, by the multiple found by the use of the appropriate tables contained in §1.72–9, as adjusted in accordance with the table in paragraph (a)(2) of §1.72–5.

(iii) For an example of the computation to be made in accordance with this subparagraph and a special election which may be made in a taxable year subsequent to a taxable year in which the total payments received under a contract described in this subparagraph are less than the total of the amounts excludable from gross income in such year under subdivision (i) of this subparagraph, see paragraph (d)(3) of §1.72–4.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6497, 25 FR 10019, Oct. 20, 1960; T.D. 6885, 31 FR 7798, June 2, 1966]

**§ 1.72–3 Excludable amounts not income.**

In general, amounts received under contracts described in paragraph (a)(1) of §1.72–2 are not to be included in the income of the recipient to the extent that such amounts are excludable from gross income as the result of the application of section 72 and the regulations thereunder.

**§ 1.72–4 Exclusion ratio.**

(a) *General rule.* (1)(i) To determine the proportionate part of the total amount received each year as an annuity which is excludable from the gross income of a recipient in the taxable year of receipt (other than amounts received under (*a*) certain employee annuities described in section 72(d) and §1.72–13, or (*b*) certain annuities described in section 72(o) and §1.122–1), an exclusion ratio is to be determined for each contract. In general, this ratio is determined by dividing the investment in the contract as found under §1.72–6 by the expected return under such contract as found under §1.72–5. Where a single consideration is given for a particular contract which provides for two or more annuity elements, an exclusion ratio shall be determined for the contract as a whole by dividing the investment in such contract by the aggregate of the expected returns under all the annuity elements provided thereunder. However, where the provisions of paragraph (b)(3) of §1.72–2 apply to payments received under such a contract, see paragraph (b)(3) of §1.72–6. In the case of a contract to which §1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, the exclusion ratio for purposes of this paragraph (a) is determined in accordance with §1.72–6(d) and, in particular, §1.72–6(d)(5)(i).

(ii) The exclusion ratio for the particular contract is then applied to the total amount received as an annuity during the taxable year by each recipient. See, however, paragraph (e)(3) of §1.72–5. Any excess of the total amount received as an annuity during the taxable year over the amount determined by the application of the exclusion ratio to such total amount shall be included in the gross income of the recipient for the taxable year of receipt.

(2) The principles of subparagraph (1) may be illustrated by the following example:

*Example.* Taxpayer A purchased an annuity contract providing for payments of $100 per month for a consideration of $12,650. Assuming that the expected return under this contract is $16,000 the exclusion ratio to be used by A is $12,650÷16,000; or 79.1 percent (79.06 rounded to the nearest tenth). If 12 such monthly payments are received by A during his taxable year, the total amount he may exclude from his gross income in such year is $949.20 ($1,200×79.1 percent).The balance of $250.80 ($1,200 less $949.20) is the amount to be included in gross income. If A instead received only five such payments during the year, he should exclude $395.50 (500×79.1 percent) of the total amounts received.

For examples of the computation of the exclusion ratio in cases where two annuity elements are acquired for a single consideration, see paragraph (b)(1) of § 1.72–6.

(3) The exclusion ratio shall be applied only to amounts received as an annuity within the meaning of that term under paragraph (b) (2) and (3) of § 1.72–2. Where the periodic payments increase in amount after the annuity starting date in a manner not provided by the terms of the contract at such date, the portion of such payments representing the increase is not an amount received as an annuity. For the treatment of amounts not received as an annuity, see section 72(e) and § 1.72–11. For special rules where paragraph (b)(3) of § 1.72–2 applies to amounts received, see paragraph (d)(3) of this section.

(4) After an exclusion ratio has been determined for a particular contract, it shall be applied to any amounts received as an annuity thereunder unless or until one of the following occurs:

(i) The contract is assigned or transferred for a valuable consideration (see section 72(g) and paragraph (a) of § 1.72–10);

(ii) The contract matures or is surrendered, redeemed, or discharged in accordance with the provisions of paragraph (c) or (d) of § 1.72–11;

(iii) The contract is exchanged (or is considered to have been exchanged) in a manner described in paragraph (e) of § 1.72–11.

(b) *Annuity starting date.* (1) Except as provided in subparagraph (2) of this paragraph, the annuity starting date is the first day of the first period for which an amount is received as an annuity, except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954. The first day of the first period for which an amount is received as an annuity shall be whichever of the following is the later:

(i) The date upon which the obligations under the contract became fixed, or

(ii) The first day of the period (year, half-year, quarter, month, or otherwise, depending on whether payments are to be made annually, semiannually, quarterly, monthly, or otherwise) which ends on the date of the first annuity payment.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the annuity starting date shall be determined in accordance with whichever of the following provisions is appropriate:

(i) In the case of a joint and survivor annuity contract described in section 72(i) and paragraph (b)(3) of § 1.72–5, the annuity starting date is January 1, 1954, or the first day of the first period for which an amount is received as an annuity by the surviving annuitant, whichever is the later;

(ii) In the case of the transfer of an annuity contract for a valuable consideration, as described in section 72(g) and paragraph (a) of § 1.72–10, the annuity starting date shall be January 1, 1954, or the first day of the first period for which the transferee received an amount as an annuity, whichever is the later;

(iii) If the provisions of paragraph (e) of § 1.72–11 apply to an exchange of one contract for another, or to a transaction deemed to be such an exchange, the annuity starting date of the contract received (or deemed received) in exchange shall be January 1, 1954, or the first day of the first period for which an amount is received as an annuity under such contract, whichever is the later; and

(iv) In the case of an employee who has retired from work because of personal injuries or sickness, and who is receiving amounts under a plan that is a wage continuation plan under section 105(d) and § 1.105–4, the annuity starting date shall be the date the employee reaches mandatory retirement age, as defined in § 1.105–4(a)(3)(i)(B). (See also §§ 1.72–15 and 1.105–6 for transitional and other special rules.)

(c) *Fiscal year taxpayers.* Fiscal year taxpayers receiving amounts as annuities in a taxable year to which the Internal Revenue Code of 1954 applies shall determine the annuity starting date in accordance with section 72(c)(4) and this section. The annuity starting date for fiscal year taxpayers receiving amounts as an annuity in a taxable year to which the Internal Revenue Code of 1939 applies shall be January 1, 1954, except where the first day of the first period for which an amount is received by such a taxpayer as an annuity is subsequent thereto and before the end of a fiscal year to which the Internal Revenue Code of 1939 applied. In such case, the latter date shall be the annuity starting date. In all cases where a fiscal year taxpayer received an amount as an annuity in a taxable year to which the Internal Revenue Code of 1939 applied and subsequent to the annuity starting date determined in accordance with the provisions of this paragraph, such amount shall be disregarded for the purposes of section 72 and the regulations thereunder.

(d) *Exceptions to the general rule.* (1) Where the provisions of section 72 would otherwise require an exclusion ratio to be determined, but the investment in the contract (determined under §1.72–6) is an amount of zero or less, no exclusion ratio shall be determined and all amounts received under such a contract shall be includible in the gross income of the recipient for the purposes of section 72.

(2) Where the investment in the contract is equal to or greater than the total expected return under such contract found under §1.72–5, the exclusion ratio shall be considered to be 100 percent and all amounts received as an annuity under such contract shall be excludable from the recipient's gross income. See, for example, paragraph (f)(1) of §1.72–5. In the case of a contract to which §1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (d)(2) is applied in the manner prescribed in §1.72–6(d) and, in particular, §1.72–6(d)(5)(ii).

(3)(i) If a contract provides for payments to be made to a taxpayer in the manner described in paragraph (b)(3) of §1.72–2, the investment in the contract shall be considered to be equal to the expected return under such contract and the resulting exclusion ratio (100%) shall be applied to all amounts received as an annuity under such contract. For any taxable year, payments received under such a contract shall be considered to be amounts received as an annuity only to the extent that they do not exceed the portion of the investment in the contract which is properly allocable to that year and hence excludable from gross income as a return of premiums or other consideration paid for the contract. The portion of the investment in the contract which is properly allocable to any taxable year shall be determined by dividing the investment in the contract (adjusted for any refund feature in the manner described in paragraph (d) of §1.72–7) by the applicable multiple (whether for a term certain, life, or lives) which would otherwise be used in determining the expected return for such a contract under §1.72–5. The multiple shall be adjusted in accordance with the provisions of the table in paragraph (a)(2) of §1.72–5, if any adjustment is necessary, before making the above computation. If payments are to be made more frequently than annually and the number of payments to be made in the taxable year in which the annuity begins are less than the number of payments to be made each year thereafter, the amounts considered received as an annuity (as otherwise determined under this subdivision) shall not exceed, for such taxable year (including a short taxable year), an amount which bears the same ratio to the portion of the investment in the contract considered allocable to each taxable year as the number of payments to be made in the first year bears to the number of payments to be made in each succeeding year. Thus, if payments are to be made monthly, only seven payments will be made in the first taxable year, and the portion of the investment in the contract allocable to a full year of payments is $600, the amounts considered received as an annuity in the first taxable year cannot exceed $350 ($\$600 \times 7/12$). See subdivision (iii) of this subparagraph for an example illustrating the determination of the portion of the investment in the contract allocable to one taxable year of the taxpayer.

(ii) If subdivision (i) of this subparagraph applies to amounts received by a taxpayer and the total amount of payments he receives in a taxable year is less than the total amount excludable for such year under subdivision (i) of this subparagraph, the taxpayer may elect, in a succeeding taxable year in which he receives another payment, to redetermine the amounts to be received as an annuity during the current and succeeding taxable years. This shall be computed in accordance with the provisions of subdivision (i) of this subparagraph except that:

(*a*) The difference between the portion of the investment in the contract allocable to a taxable year, as found in accordance with subdivision (i) of this subparagraph, and the total payments actually received in the taxable year prior to the election shall be divided by the applicable life expectancy of the annuitant (or annuitants), found in accordance with the appropriate table in §1.72–9 (and adjusted in accordance with paragraph (a)(2) of §1.72–5), or by the remaining term of a term certain annuity, computed as of the first day of the first period for which an amount is received as an annuity in the taxable year of the election; and

(*b*) The amount determined under (*a*) of this subdivision shall be added to the portion of the investment in the contract allocable to each taxable year (as otherwise found). To the extent that the total periodic payments received under the contract in the taxable year of the election or any succeeding taxable year does not equal this total sum, such payments shall be excludable from the gross income of the recipient. To the extent such payments exceed the sum so found, they shall be fully includible in the recipient's gross income. See subdivision (iii) of this subparagraph for an example illustrating the redetermination of amounts to be received as an annuity and subdivision (iv) of this subparagraph for the method of making the election provided by this subdivision.

(iii) The application of the principles of paragraph (d)(3) (i) and (ii) of this section may be illustrated by the following example:

*Example.* Taxpayer A, a 64 year old male, files his return on a calendar year basis and has a life expectancy of 15.6 years on June 30, 1954, the annuity starting date of a contract to which §1.72–2(b)(3) applies and which he purchased for $20,000. The contract provides for variable annual payments for his life. He receives a payment of $1,000 on June 30, 1955, but receives no other payment until June 30, 1957. He excludes the $1,000 payment from his gross income for the year 1955 since this amount is less than $1,324.50, the amount determined by dividing his investment in the contract ($20,000) by his life expectancy adjusted for annual payments, 15.1 (15.6 − 0.5), as of the original annuity starting date. Taxpayer A may elect, in his return for the taxable year 1957, to redetermine amounts to be received as an annuity under his contract as of June 30, 1956. For the purpose of determining the extent to which amounts received in 1957 or thereafter shall be considered amounts received as an annuity (to which a 100 percent exclusion ratio shall apply) he shall add $118.63 to the $1,324.50 originally determined to be receivable as an annuity under the contract, making a total of $1,443.13. This is determined by dividing the difference between what was excludable in 1955 and 1956, $2,649 (2×$1,324.50) and what he actually received in those years ($1,000) by his life expectancy adjusted for annual payments, 13.9 (14.4 − 0.5), as of his age at his nearest birthday (66) on the first day of the first period for which he received an amount as an annuity in the taxable year of election (June 30, 1956). The result, $1,443.13, is excludable in that year and each year thereafter as an amount received as an annuity to which the 100% exclusion ratio applies. It will be noted that in this example the taxpayer received amounts less than the excludable amounts in two successive years and deferred making his election until the third year, and thus was able to accumulate the portion of the investment in the contract allocable to each taxable year to the extent he failed to receive such portion in both years. Assuming that he received $1,500 in the taxable year of his election, he would include $56.87 in his gross income and exclude $1,443.13 therefrom for that year.

(iv) If the taxpayer chooses to make the election described in subdivision (ii) of this subparagraph, he shall file with his return a statement that he elects to make a redetermination of the amounts excludable from gross income under his annuity contract in accordance with the provisions of paragraph (d)(3) of §1.72–4. This statement shall also contain the following information:

(*a*) The original annuity starting date and his age on that date,

(*b*) The date of the first day of the first period for which he received an amount in the current taxable year,

(*c*) The investment in the contract originally determined (as adjusted for any refund feature), and

(*d*) The aggregate of all amounts received under the contract between the date indicated in (*a*) of this subdivision and the day after the date indicated in (*b*) of this subdivision to the extent such amounts were excludable from gross income.

He shall include in gross income any amounts received during the taxable year for which the return is made in accordance with the redetermination made under this subparagraph.

(v) In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (d)(3) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(iii). This application may be illustrated by the following example:

*Example.* B, a male calendar year taxpayer, purchases a contract which provides for variable annual payments for life and to which § 1.72–2(b)(3) applies. The annuity starting date of the contract is June 30, 1990, when B is 64 years old. B receives a payment of $1,000 on June 30, 1991, but receives no other payment until June 30, 1993. B's total investment in the contract is $25,000. B's pre-July 1986 investment in the contract is $12,000. If B makes the election described in § 1.72–6(d)(6), separate computations are required to determine the amounts received as an annuity and excludable from gross income with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. In the separate computations, B first determines the applicable portions of the total payment received which are allocable to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. The portion of the payment received allocable to the pre-July 1986 investment in the contract is $480 ($12,000/$25,000 × $1,000). The portion of the payment received allocable to the post-June 1986 investment in the contract is $520 ($13,000/$25,000 × $1,000).

Second, B determines the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract allocable to the taxable year by dividing the pre-July 1986 and post-June 1986 investments in the contract by the applicable life expectancy multiple. The life expectancy multiple applicable to pre-July 1986 investment in the contract is B's life expectancy as of the original annuity starting date adjusted for annual payments and is determined under Table I of § 1.72–9 [15.1 (15.6 − 0.5)]. The life expectancy multiple applicable to post-June 1986 investment in the contract is determined under Table V of § 1.72–9 (20.3 (20.8–0.5)). Thus, the pre-July 1986 investment in the contract allocable to each taxable year is $794.70 ($12,000÷15.1), and the post-June 1986 investment in the contract so allocable is $640.39 ($13,000÷20.3). Because the applicable portions of the total payment received in 1991 under the contract ($480 allocable to the pre-July 1986 investment in the contract and $520 allocable to the post-June 1986 investment in the contract) are treated as amounts received as an annuity and are excludable from gross income to the extent they do not exceed the portion of the corresponding investment in the contract allocable to 1991 ($794.70 pre-July 1986 investment in the contract and $640.39 post-June 1986 investment in the contract), the entire amount of each applicable portion of the total payment is excludable from gross income. B may elect, in the return filed for taxable year 1993, to redetermine amounts to be received as an annuity under the contract as of June 30, 1992. The extent to which the amounts received in 1993 or thereafter shall be considered amounts received as an annuity is determined as follows:

| | |
|---|---|
| Pre-July 1986 investment in the contract allocable to taxable years 1991 and 1992 ($794.70 × 2) | $1,589.40 |
| Less: Portion of total payments allocable to pre-July 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992 | 480.00 |
| | 1,109.40 |
| Divided by: Life expectancy multiple applicable to pre-July 1986 investment in the contract for B, age 66 (14.4—0.5) | 13.9 |
| | 79.81 |
| Plus: Amount originally determined with respect to pre-July 1986 investment in the contract | 794.70 |
| Pre-July 1986 amount | 874.51 |
| Post-June 1986 investment in the contract allocable to taxable years 1991 and 1992 ($640.39 × 2) | $1,280.78 |
| Less: Portion of total payments allocable to post-June 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992 | 520.00 |
| | 760.78 |
| Divided by: Life expectancy multiple applicable to post-June 1986 investment in the contract for B, age 66 (19.2 − 0.5) | 18.7 |
| | 40.68 |
| Plus: Amount originally determined with respect to post-June 1986 investment in the contract | 640.39 |
| Post-June 1986 amount | 681.07 |

(vi) The method of making an election to perform the separate computations illustrated in paragraph (d)(3)(v) of this section is described in § 1.72–6(d)(6).

(e) *Exclusion ratio in the case of two or more annuity elements acquired for a single consideration.* (1)(i) Where two or more annuity elements are provided under a contract described in paragraph (a)(2) of §1.72–2, an exclusion ratio shall be determined for the contract as a whole and applied to all amounts received as an annuity under any of the annuity elements. To obtain this ratio, the investment in the contract determined in accordance with §1.72–6 shall be divided by the aggregate of the expected returns found with respect to each of the annuity elements in accordance with §1.72–5. For this purpose, it is immaterial that payments under one or more of the annuity elements involved have not commenced at the time when an amount is first received as an annuity under one or more of the other annuity elements.

(ii) The exclusion ratio found under subdivision (i) of this subparagraph does not apply to:

(*a*) An annuity element payable to a surviving annuitant under a joint and survivor annuity contract to which section 72(i) and paragraphs (b)(3) and (e)(3) of §1.72–5 apply, or to

(*b*) A contract under which one or more of the constituent annuity elements provides for payments described in paragraph (b)(3) of §1.72–2.

For rules with respect to a contract providing for annuity elements described in (*b*) of this subdivision, see subparagraph (2) of this paragraph.

(2) If one or more of the annuity elements under a contract described in paragraph (a)(2) of §1.72–2 provides for payments to which paragraph (b)(3) of §1.72–2 applies:

(i) With respect to the annuity elements to which paragraph (b)(3) of §1.72–2 does not apply, an exclusion ratio shall be determined by dividing the portion of the investment in the entire contract which is properly allocable to all such elements (in the manner provided in paragraph (b)(3)(ii) of §1.72–6) by the aggregate of the expected returns thereunder and such ratio shall be applied in the manner described in subdivision (i) of subparagraph (1); and

(ii) With respect to the annuity elements to which paragraph (b)(3) of §1.72–2 does apply, the investment in the entire contract shall be reduced by the portion thereof found in subdivision (i) of this subparagraph and the resulting amount shall be used to determine the extent to which the aggregate of the payments received during the taxable year under all such elements is excludable from gross income. The amount so excludable shall be allocated to each recipient under such elements in the same ratio that the total of payments he receives each year bears to the total of the payments received by all such recipients during the year. The exclusion ratio with respect to the amounts so allocated shall be 100 percent. See paragraph (f)(2) of §1.72–5 and paragraph (b)(3) of §1.72–6.

(iii) In the case of a contract to which §1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (e) is applied in the manner prescribed in §1.72–6(d) and, in particular, §1.72–6(d)(5)(iv).

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 7352, 40 FR 16663, Apr. 14, 1975; T.D. 8115, 51 FR 45691, Dec. 19, 1986; 52 FR 10223, Mar. 31, 1987]

### § 1.72–5 Expected return.

(a) *Expected return for but one life.* (1) If a contract to which section 72 applies provides that one annuitant is to receive a fixed monthly income for life, the expected return is determined by multiplying the total of the annuity payments to be received annually by the multiple shown in Table I or V (whichever is applicable) of §1.72–9 under the age (as of the annuity starting date) and, if applicable, sex of the measuring life (usually the annuitant's). Thus, where a male purchases a contract before July 1, 1986, providing for an immediate annuity of $100 per month for his life and, as of the annuity starting date (in this case the date of purchase), the annuitant's age at his nearest birthday is 66, the expected return is computed as follows:

| | |
|---|---|
| Monthly payment of $100×12 months equals annual payment of | $1,200 |
| Multiple shown in Table I, male, age 66 | 14.4 |
| Expected return (1,200×14.4) | 17,280 |

If, however, the taxpayer had purchased the contract after June 30, 1986, the expected return would be $23,040, determined by multiplying 19.2 (multiple shown in Table V, age 66) by $1,200.

(2)(i) If payments are to be made quarterly, semiannually, or annually, an adjustment of the applicable multiple shown in Table I or V (whichever is applicable) may be required. A further adjustment may be required where the interval between the annuity starting date and the date of the first payment is less than the interval between future payments. Neither adjustment shall be made, however, if the payments are to be made more frequently than quarterly. The amount of the adjustment, if any, is to be found in accordance with the following table:

| If the number of whole months from the annuity starting date to the first payment date is— | 0–1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| And the payments under the contract are to be made: | | | | | | | | | | | | |
| Annually | +0.5 | +0.4 | +0.3 | +0.2 | +0.1 | 0 | 0 | −0.1 | −0.2 | −0.3 | −0.4 | −0.5 |
| Semiannually | +.2 | +.1 | 0 | 0 | −.1 | −.2 | | | | | | |
| Quarterly | +.1 | 0 | −.1 | ........ | ........ | ........ | ............ | ............ | ............ | ............ | ............ | ............ |

Thus, for a male, age 66, the multiple found in Table I, adjusted for quarterly payments the first of which is to be made one full month after the annuity starting date, is 14.5 (14.4+0.1); for semiannual payments the first of which is to be made six full months from the annuity starting date, the adjusted multiple is 14.2 (14.4−0.2); for annual payments the first of which is to be made one full month from the annuity starting date, the adjusted multiple is 14.9 (14.4+0.5). If the annuitant in the example shown in subparagraph (1) of this paragraph were to receive an annual payment of $1,200 commencing 12 full months after his annuity starting date, the amount of the expected return would be $16,680 ($1,200×13.9 [14.4−0.5]). Similarly, for an annuitant, age 50, the multiple found in Table V, adjusted for quarterly payments the first of which is to be made one full month after the annuity starting date, is 33.2 (33.1+0.1); for semiannual payments the first of which is to be made six full months from the annuity starting date, the adjusted multiple is 32.9 (33.1−0.2); for annual payments the first of which is to be made one full month from the annuity starting date, the adjusted multiple is 33.6 (33.1+0.5).

(ii) Notwithstanding the table in subdivision (i) of this subparagraph, adjustments of multiples for early or other than monthly payments determined prior to February 19, 1956, under the table prescribed in paragraph 1(b)(4) of T.D. 6118 (19 FR 9897, C.B. 1955–1, 699), approved December 30, 1954, need not be redetermined.

(3) If the contract provides for fixed payments to be made to an annuitant until death or until the expiration of a specified limited period, whichever occurs earlier, the expected return of such temporary life annuity is determined by multiplying the total of the annuity payments to be received annually by the multiple shown in Table IV or VIII (whichever is applicable) of §1.72–9 for the age (as of the annuity starting date) and, if applicable, sex of the annuitant and the nearest whole number of years in the specified period. For example, if a male annuitant, age 60 (at his nearest birthday), is to receive $60 per month for five years or until he dies, whichever is earlier, and there is no post-June 1986, investment in the contract, the expected return under such a contract is $3,456, computed as follows:

| | |
|---|---|
| Monthly payments of $60×12 months equals annual payment of | $720 |
| Multiple shown in Table IV for male, age 60, for term of 5 years | 4.8 |
| Expected return for 5 year temporary life annuity of $720 per year ($720×4.8) | $3,456 |

If the annuitant purchased the same contract after June 30, 1986, the expected return under the contract would be $3,528, computed as follows:

| | |
|---|---|
| Monthly payments of $60×12 months equals annual payment of | $720.00 |

| | |
|---|---|
| Multiple shown in Table VIII for annuitant, age 60, for term of 5 years | 4.9 |
| Expected return for 5-year temporary life annuity of $720 per year ($720×4.9) | $3,528.00 |

The adjustment provided by subparagraph (2) of this paragraph shall not be made with respect to the multiple found in Table IV or VIII (whichever is applicable).

(4) If the contract provides for payments to be made to an annuitant for the annuitant's lifetime, but the amount of the annual payments is to be decreased after the expiration of a specified limited period, the expected return is computed by considering the contract as a combination of a whole life annuity for the smaller amount plus a temporary life annuity for an amount equal to the difference between the larger and the smaller amount. For example, if a male annuitant, age 60, is to receive $150 per month for five years or until his earlier death, and is to receive $90 per month for the remainder of his lifetime after such five years, the expected return is computed as if the annuitant's contract consisted of a whole life annuity for $90 per month plus a five year temporary life annuity of $60 per month. In such circumstances, the expected return if there is no post-June 1986 investment in the contract is computed as follows:

| | |
|---|---|
| Monthly payments of $90×12 months equals annual payment of | $1,080 |
| Multiple shown in Table I for male, age 60 | 18.2 |
| Expected return for whole life annuity of $1,080 per year | $19,656 |
| Expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a)) | $3,456 |
| Total expected return | $23,112 |

If the annuitant purchased the same contract after June 30, 1986, the expected return would be $29,664, computed as follows:

| | |
|---|---|
| Monthly payments of $90×12 months equals annual payment of | $1,080 |
| Multiple shown in Table V for annuitant, age 60 | 24.2 |
| Expected return for whole life annuity of $1,080 per year | $26,136 |
| Plus: Expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a)) | $3,528 |
| Total expected return | $29,664 |

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table I or V (whichever is applicable) for the whole life annuity should be made in accordance with subparagraph (2) of this paragraph.

(5) If the contract described in subparagraph (4) of this paragraph provided that the amount of the annual payments to the annuitant were to be increased (instead of decreased) after the expiration of a specified limited period, the expected return would be computed as if the annuitant's contract consisted of a whole life annuity for the larger amount minus a temporary life annuity for an amount equal to the difference between the larger and smaller amount. Thus, if the annuitant described in subparagraph (4) of this paragraph were to receive $90 per month for five years or until his earlier death, and to receive $150 per month for the remainder of his lifetime after such five years, the expected return would be computed by subtracting the expected return under a five year temporary life annuity of $60 per month from the expected return under a whole life annuity of $150 per month. In such circumstances, the expected return if there is no post-June 1986 investment in the contract is computed as follows:

| | |
|---|---|
| Monthly payments of $150×12 months equals annual payment of | $1,800 |
| Multiple shown in Table 1 (male, age 60) | 18.2 |
| Expected return for annuity for whole life of $1,800 per year | $32,760 |
| Less expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3)) | $3,456 |
| Net expected return | $29,304 |

If the annuitant purchased the same contract after June 30, 1986, the expected return would be $40,032, computed as follows:

| | |
|---|---|
| Monthly payments of $150×12 months equals annual payments of | $1,800 |
| Multiple shown in Table V (age 60) | 24.2 |
| Expected return for annuity for whole life of $1,800 per year | $43,560 |
| Less expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a)) | $3,528 |
| Net expected return | $40,032 |

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table I or V (whichever is applicable) for the whole life annuity should be made in accordance with subparagraph (2) of this paragraph.

(b) *Expected return under joint and survivor and joint annuities.* (1) In the case of a joint and survivor annuity contract involving two annuitants which provides the first annuitant with a fixed monthly income for life and, after the death of the first annuitant, provides an identical monthly income for life to a second annuitant, the expected return shall be determined by multiplying the total amount of the payments to be received annually by the multiple obtained from Table II or VI (whichever is applicable) of §1.72–9 under the ages (as of the annuity starting date) and, if applicable, sexes of the living annuitants. For example, a husband purchases a joint and survivor annuity contract providing for payments of $100 per month for life and, after his death, for the same amount to his wife for the remainder of her life. As of the annuity starting date his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. If there is no post-June 1986 investment in the contract, the expected return is computed as follows:

| | |
|---|---|
| Monthly payments of $100×12 months equals annual payment of | $1,200 |
| Multiple shown in Table II (male, age 70, female, age 67) | 19.7 |
| Expected return ($1,200×19.7) | $23,640 |

If the annuitants purchased the same contract after June 30, 1986, the expected return would be $26,400, computed as follows:

| | |
|---|---|
| Monthly payments of $100×12 months equals annual payment of | $1,200 |
| Multiple shown in Table VI (ages 70, 67) | 22.0 |
| Expected return ($1,200×22.0) | $26,400 |

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table II or VI (whichever is applicable) should be made in accordance with paragraph (a)(2) of this section.

(2) If a contract of the type described in subparagraph (1) of this paragraph provides that a different (rather than an identical) monthly income is payable to the second annuitant, the expected return is computed in the following manner. The applicable multiple in Table II or VI (whichever is applicable) is first found as in the example in subparagraph (1) of this paragraph. The multiple applicable to the first annuitant is then found in Table I or V (whichever is applicable) as though the contract were for a single life annuity. The multiple from Table I or V is then subtracted from the multiple obtained from Table II or VI and the resulting multiple is applied to the total payments to be received annually under the contract by the second annuitant. The result is the expected return with respect to the second annuitant. The portion of the expected return with respect to payments to be made during the first annuitant's life is then computed by applying the multiple found in Table I or V to the total annual payments to be received by such annuitant under the contract. The expected returns with respect to each of the annuitants separately are then aggregated to obtain the expected return under the entire contract.

*Example 1.* A husband purchases a joint and survivor annuity providing for payments of $100 per month for his life and, after his death, payments to his wife of $50 per month for her life. As of the annuity starting date his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. There is no post-June 1986 investment in the contract.

| | |
|---|---|
| Multiple from Table II (male, age 70, female, age 67) | 19.7 |
| Multiple from Table I (male, age 70) | 12.1 |
| Difference (multiple applicable to second annuitant) | 7.6 |
| Portion of expected return, second annuitant ($600×7.6) | $4,560 |
| Portion of expected return, first annuitant ($1,200×12.1) | $14,520 |
| Expected return under the contract | $19,080 |

The expected return thus found, $19,080, is to be used in computing the amount to be excluded from gross income. Thus, if the investment in the contract in this example is $14,310, the exclusion ratio is $14,310÷$19,080; or 75 percent. The amount excludable from each monthly payment made to the husband is 75 percent of $100, or $75, and the remaining $25 of each payment received by him shall be included in his gross income. After the husband's death, the amount excludable by the second annuitant (the surviving wife) would be 75 percent of each monthly payment of $50, or $37.50, and the remaining $12.50 of each payment shall be included in her gross income.

*Example 2.* If the same contract were purchased after June 30, 1986, the expected return would be $22,800, computed as follows:

| | |
|---|---|
| Multiple from Table VI (ages 70, 67) | 22.0 |
| Multiple from Table V (age 70) | 16.0 |
| Difference (multiple applicable to second annuitant) | 6.0 |
| Portion of expected return, second annuitant ($600×6.0) | $3,600 |
| Plus: Portion of expected return, first annuitant ($1,200×16.0) | $19,200 |
| Expected return under the contract | $22,800 |

If the investment in the contract is $14,310, the exclusion ratio is $14,310÷$22,800, or 62.8 percent. Thus, the husband would exclude $62.80 of each $100 payment received by him. After his death, his wife would exclude 62.8 percent, or $31.40, of each $50 monthly payment.

*Example 3.* If amounts were invested in the same contract both before July 1, 1986, and after June 30, 1986, and the election described in § 1.72–6(d)(6) were made, two exclusion ratios would be determined pursuant to § 1.72–6(d). Assume that the husband's total investment in the contract is $14,310 and that $7,310 is the pre-July 1986 investment in the contract. The pre-July 1986 exclusion ratio would be $7,310÷$19,080, or 38.3 percent. The post-June 1986 exclusion ratio would be $7,000÷$22,800, or 30.7 percent. The husband would exclude $69.00 ($38.30+$30.70) of the $100 monthly payment received by him. The remaining $31.00 would be included in his gross income. After the husband's death, the amount excludable by his wife would be $34.50 (38.3 percent of $50 plus 30.7 percent of $50). The remaining $15.50 would be included in gross income.

The same method is used if the payments are to be increased after the death of the first annuitant. Thus, if the payments to be made until the husband's death were $50 per month and his widow were to receive $100 per month thereafter until her death, the 7.6 multiple in example (1) above would be applied to the $100 payments, yielding an expected return with respect to this portion of the annuity contract of $9,120 ($1,200×7.6). An expected return of $7,260 ($600×12.1) would be obtained with respect to the payments to be made to the husband, yielding a total expected return under the contract of $16,380 ($9,120 plus $7,260). If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiples found in Tables I and II or Tables V and VI (whichever are applicable) should be made in accordance with paragraph (a)(2) of this section.

(3) In the case of a joint and survivor annuity contract in respect of which the first annuitant died in 1951, 1952, or 1953, and the basis of the surviving annuitant's interest in the contract was determinable under section 113(a)(5) of the Internal Revenue Code of 1939, such basis shall be considered the ''aggregate of premiums or other consideration paid'' by the surviving annuitant for the contract. (For rules governing this determination, see 26 CFR (1939) 39.22(b)(2)–2 and 39.113(a)(5)–1 (Regulations 118).) In determining such an annuitant's investment in the contract, such aggregate shall be reduced by any amounts received under the contract by the surviving annuitant before the annuity starting date, to the extent such amounts were excludable from his gross income at the time of receipt. The expected return of the surviving annuitant in such cases shall be determined in the manner prescribed in paragraph (a) of this section, as though the surviving annuitant alone were involved. For this purpose, the appropriate multiple for the survivor shall be obtained from Table I as of the annuity starting date determined in accordance with paragraph (b)(2)(i) of § 1.72–4.

(4) If a contract involving two annuitants provides for fixed monthly payments to be made as a joint life annuity until the death of the first annuitant to die (in other words, only as long as both remain alive), the expected return under such contract shall be determined by multiplying the total of the annuity payments to be received annually under the contract by the multiple obtained from Table IIA or VIA (whichever is applicable) of § 1.72–9 under the ages (as of the annuity starting date) and, if applicable, sexes of the annuitants. If, however, payments are to be made under the contract quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table IIA or VIA shall be made in accordance with paragraph (a)(2) of this section.

(5) If a joint and survivor annuity contract involving two annuitants provides that a specified amount shall be paid during their joint lives and a different specified amount shall be paid to the survivor upon the death of whichever of the annuitants is the first to die, the following preliminary computation shall be made in all cases preparatory to determining the expected return under the contract:

(i) From Table II or VI (whichever is applicable), obtain the multiple under both of the annuitants' ages (as of the annuity starting date) and, if applicable, their appropriate sexes;

(ii) From Table IIA or VIA (whichever is applicable), obtain the multiple applicable to both annuitants' ages (as of the annuity starting date) and, if applicable, their appropriate sexes;

(iii) Apply the multiple found in subdivision (i) of this subparagraph to the total of the amounts to be received annually after the death of the first to die; and

(iv) Apply the multiple found in subdivision (ii) of this subparagraph to the difference between the total of the amounts to be received annually before and the total of the amounts to be received annually after the death of the first to die.

If the original annual payment is in excess of the annual payment to be made after the death of the first to die, the expected return is the sum of the amounts determined under subdivisions (iii) and (iv) of this subparagraph. This may be illustrated by the following examples:

*Example 1.* A husband purchases a joint and survivor annuity providing for payments of $100 a month for as long as both he and his wife live, and, after the death of the first to die, payments to the survivor of $75 a month for life. As of the annuity starting date, his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. If there is no post-June 1986 investment in the contract, the expected return under the contract is computed as follows:

| | |
|---|---|
| Multiple from Table II (male age 70, female age 67) | 19.7 |
| Multiple from Table IIA (male age 70, female age 67) | 9.3 |
| Portion of expected return ($900×19.7—sum per year after first death) | $17,730 |
| Plus: Portion of expected return ($300×9.3—amount of change in sum at first death) | $2,790 |
| Expected return under the contract | $20,520 |

The total expected return in this example, $20,520, is to be used in computing the amount to be excluded from gross income. Thus, if the investment in the contract is $17,887, the exclusion ratio is $17,887÷$20,520, or 87.2 percent. The amount excludable from each monthly payment made while both are alive is 87.2 percent of $100, or $87.20, and the remaining $12.80 of each payment shall be included in gross income. After the death of the first to die, the amount excludable by the survivor shall be 87.2 percent of each monthly payment of $75, or $65.40, and the remaining $9.60 of each payment shall be included in gross income.

*Example 2.* Assume the same facts as in example (1), except that the contract is purchased after June 30, 1986.

The expected return under the contract is computed as follows:

| | |
|---|---|
| Multiple from Table VI (ages 70, 67) | 22.0 |
| Multiple from Table VIA (ages 70, 67) | 12.4 |
| Portion of expected return ($900×22.0—sum per year after first death) | $19,800 |
| Plus: Portion of expected return ($300×12.4—amount of change in sum at first death) | $3,720 |
| Expected return under the contract | $23,520 |

Thus, if the investment in the contract is $17,887, the exclusion ratio is $17,887÷$23,520, or 76.1 percent. The amount excludable from each monthly payment made while both are alive would be 76.1 percent of $100, or $76.10, and the remaining $23.90 of each payment would be included in gross income. After the death of the first to die, the amount excludable by the survivor would be 76.1 percent of each monthly payment of $75, or $57.08, and the remaining $17.92 of each payment would be included in gross income.

*Example 3.* Assume the same facts as in examples (1) and (2), except that the total investment in the contract is $17,887, and that the pre-July 1986 investment in the contract is $8,000. Assume also that one of the annuitants makes the election described in §1.72–6(d)(6). Separate computations shall be performed pursuant to §1.72–6(d) to determine the amount excludable from gross income. The pre-July 1986 exclusion ratio would be $8,000÷$20,520, or 39 percent. The post-June 1986 exclusion ratio would be $9,887÷$23,520, or 42 percent. The amount excludable from each monthly payment made while both are alive would be $81 ((.39×100)+(.42×100)), and the remaining $19 would be included in gross income. After the death of the first to die, the amount excludable by the survivor would be $60.75 ((.39×75)+(.42×75)), and the remaining $14.25 would be included in gross income.

If the original annual payment is less than the annual payment to be made after the death of the first to die, the expected return is the difference between the amounts determined under subdivisions (iii) and (iv) of this subparagraph. If, however, payments are to be made quarterly, semiannually, or annually under the contract, the multiples obtained from both Tables II and IIA or Tables VI and VIA (whichever are applicable) shall first be adjusted in a manner prescribed in paragraph (a)(2) of this section.

(6) If a contract provides for the payment of life annuities to two persons during their respective lives and, after the death of one (without regard to which one dies first), provides that the survivor shall receive for life both his own annuity payments and the payments made formerly to the deceased person, the expected return shall be determined in accordance with paragraph (e)(4) of this section.

(7) If paragraph (b)(3) of § 1.72–2 applies to payments provided under a contract and this paragraph applies to such payments, the principles of this paragraph shall be used in making the computations described in paragraph (d)(3) of § 1.72–4. This may be illustrated by the following examples, examples (1) through (3) of which assume that there is no post-June 1986 investment in the contract:

*Example 1.* Taxpayer A, a male age 63, pays $24,000 for a contract which provides that the proceeds (both income and return of capital) from eight units of an investment fund shall be paid monthly to him for his life and that after his death the proceeds from six such units shall be paid monthly to B, a female age 55, for her life. The portion of the investment in the contract allocable to each taxable year of A is $955.20 and that allocable to each taxable year of B is $716.40. This is determined in the following manner:

| | |
|---|---|
| Multiple from Table II (male, age 63, and female, age 55) | 28.1 |
| Number of units to be paid, in effect, as a joint and survivor annuity | ×6 |
| Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element | 168.6 |
| Multiple from Table I (male, age 63) | 16.2 |
| Number of units to be paid, in effect, as a single life annuity | ×2 |
| Number of total annual unit payments anticipatable with respect to A alone | 32.4 |
| Total number of unit payments anticipatable | 201 |
| Portion of investment in the contract allocable to unit payments ($24,000÷201) on an annual basis | $119.40 |
| Number of units payable to A while he continues to live | ×8 |
| Portion of the investment in the contract allocable to each taxable year of A | $955.20 |
| Portion of investment in the contract allocable to unit payments ($24,000÷201) on an annual basis | $119.40 |
| Number of units payable to B for her life after A's death | ×6 |
| Portion of the investment in the contract allocable to each taxable year of B | $716.40 |

For the purpose of the above computation it is immaterial whether or not A lives to or beyond the life expectancy shown for him in Table I.

*Example 2.* Assume that Taxpayer A in example (1) receives payments for five years which are at least as large as the portion of the investment in the contract allocable to such years, but in the sixth year he receives a total of only $626.40 rather than the $955.20 allocable to such year. A is 69 and B is 61 at the beginning of the first monthly period for which an amount is payable in the seventh taxable year. A makes the election in that year provided under paragraph (d)(3) of § 1.72–4. The difference between the portion of the investment in the contract allocable to the sixth year and the amount actually received in that year is $328.80 ($955.20 less $626.40). In this case, 139.2 unit payments are anticipatable (on an annual basis), since the appropriate multiple from Table II of § 1.72–9, 23.2, multiplied by the number of units payable, in effect, as a joint and survivor annuity yields this result (6×23.2). A's appropriate multiple from Table I of § 1.72–9 for the two units which will cease to be paid at his death is 12.6, and the total number of unit payments anticipatable (on an annual basis) is, therefore, 164.4 (2×12.6 plus 139.2). Dividing the difference previously found ($328.80) by the total number of unit payments thus determined (164.4) indicates that A will have an additional allocation of the investment in the contract of $16 to the seventh and every succeeding full taxable year (8 units×$2), and B will have an additional allocation of the investment in the contract of $12 (6 units×$2) to each taxable year in which she receives 12 monthly payments subsequent to the death of A. The total allocable to each taxable year of A is, therefore, $971.20, and that allocable to each taxable year of B will be $728.40.

*Example 3.* If, in example (2), A had died at the end of the fifth year, in the sixth year B would have received a payment of $469.80 (that portion of the $626.40 that A would have received which is in the same ratio that 6 units bear to 8 units) and would thus have received $246.60 less than the portion of the investment in the contract originally determined to be allocable to each of her taxable years. In these circumstances, B would be entitled to elect to redetermine the portion of the investment in the contract allocable to the taxable year of election and all subsequent years. The new amount allocable thereto would be found by dividing the $246.60 difference by her life expectancy as of the first day of the first period for which she received an amount as an annuity in the seventh year of the annuity contract, and adding the result to her originally determined allocation of $716.40.

*Example 4.* On July 1, 1986, Taxpayer C, age 60, pays $28,000 for a contract which provides that the proceeds (both income and return of capital) from 10 units of an investment fund shall be paid monthly to C for C's life and that after C's death the proceeds from 4 such units shall be paid monthly to D, age 57, for D's life. The portion of the investment in the contract allocable to each taxable year of C is $1,037.00 and that allocable to each taxable year of D is $414.80. This is determined as follows:

| | |
|---|---|
| Multiple from Table VI (ages 60, 57) | 31.2 |
| Number of units to be paid, in effect, as a joint and survivor annuity | ×4 |
| Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element | 124.8 |
| Multiple from Table V (age 60) | 24.2 |
| Number of units to be paid, in effect, as a single life annuity | ×6 |
| Number of total annual unit payments anticipatable with respect to C alone | 145.2 |
| Total number of unit payments anticipatable | 270 |
| Portion of investment in the contract allocable to unit payments ($28,000÷270) on an annual basis | 103.70 |
| Number of units payable to C while C continues to live | ×10 |
| Portion of the investment in the contract allocable to each taxable year of C | $1,037.00 |
| Portion of investment in the contract allocable to unit payments ($28,000÷270) on an annual basis | $103.70 |
| Number of units payable to D for D's life after C's death | ×4 |
| Portion of the investment in the contract allocable to each taxable year of D | $414.80 |

For purposes of the above computation it is immaterial whether or not C lives to or beyond the life expectancy shown in Table V.

*Example 5.* Assume the same facts as in example (4), except that C's total investment in the contract is $28,000, and C's pre-July 1986 investment in the contract is $16,000. If C makes the election described in §1.72–6(d)(6), separate computations are required to determine the amount excludable from gross income with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. The annuitant shall apply the appropriate pre-July 1986 and post-June 1986 life expectancy multiples to the applicable portions of the units to be paid as a joint and survivor annuity, and as a single life annuity.

*Pre-July 1986 Computation (all references to unit payments are to the pre-July 1986 applicable portion of such payments):*

| | |
|---|---|
| Multiple from Table II (male, age 60, female, age 57) | 27.6 |
| Number of units to be paid, in effect, as a joint and survivor annuity | ×4 |
| Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element | 110.40 |
| Multiple from Table I (male, age 60) | 18.2 |
| Number of units to be paid, in effect, as a single life annuity | ×6 |
| Number of total annual unit payments anticipatable with respect to C alone | 109.20 |
| Total number of unit payments anticipatable | 219.6 |
| Portion of pre-July 1986 investment in the contract allocable to unit payments ($16,000÷219.60) on an annual basis | $72.86 |
| Number of units payable to C while C continues to live | ×10 |
| Portion of pre-July 1986 investment in the contract allocable to each taxable year of C | 728.60 |
| Portion of pre-July 1986 investment in the contract allocable to unit payments ($16,000÷219.60) on an annual basis | 72.86 |
| Number of units payable to D for D's life after C's death | ×4 |
| Portion of pre-July 1986 investment in the contract allocable to each taxable year of D | $291.44 |

*Post-June 1986 Computation (all references to unit payments are to the post-June 1986 applicable portion of such payments):*

| | |
|---|---|
| Multiple from Table VI (ages 60, 57) | 31.2 |
| Number of units to be paid, in effect, as a joint and survivor annuity | x4 |
| Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element | 124.80 |
| Multiple from Table V (age 60) | 24.2 |
| Number of units to be paid, in effect, as a single life annuity | ×6 |
| Number of total annual unit payments anticipatable with respect to C alone | 145.20 |
| Total number of unit payments anticipatable | 270 |

| | |
|---|---|
| Portion of post-June 1986 investment in the contract allocable to unit payments ($12,000÷270) on an annual basis .......... | $44.44 |
| Number of units payable to C while C continues to live ............................................ | ×10 |
| Portion of post-June 1986 investment in the contract allocable to each taxable year of C .............................................................. | $444.40 |
| Portion of post-June 1986 investment in the contract allocable to unit payments ($12,000÷270) on an annual basis .......... | 44.44 |
| Number of units payable to D for D's life after C's death ......................................... | ×4 |
| Portion of post-June 1986 investment in the contract allocable to each taxable year of D .............................................................. | $177.78 |
| Total computation: | |
| Total portion of the investment in the contract allocable to each taxable year of C ($728.60+$444.40) ........... | $1,173.00 |
| Total portion of the investment in the contract allocable to each taxable year of D ($291.44+$177.78) ........... | $469.22 |

*Example 6.* Assume that taxpayer C in example (4) receives payments for four years which are at least as large as the portion of the investment in the contract allocable to such years, but in the fifth year receives a total of only $600 rather than the $1,037 allocable to such year. C is 65 and D is 62 at the beginning of the first monthly period for which an amount is payable in the sixth taxable year. C makes the election in that year provided under paragraph (d)(3) of §1.72–4. The difference between the portion of the investment in the contract allocable to the fifth year and the amount actually received in that year is $437 ($1,037 − $600). In this case, 106 unit payments are anticipatable with respect to the joint and survivor annuity element, since the appropriate multiple from Table VI of §1.72–9, 26.5, multiplied by the number of units payable, in effect, as a joint and survivor annuity yields this result (4 × 26.0). C's appropriate multiple from Table V of §1.72–9 for the six units which will cease to be paid at C's death is 20.0, and the number of unit payments anticipatable with respect to C alone is 120 (6 × 20). The total number of unit payments anticipatable is, therefore, 226 (120 plus 106). Dividing the difference previously found ($437) by the total number of unit payments thus determined (226) indicates that C will have an additional allocation of the investment in the contract of $19.30 to the sixth and every succeeding full taxable year (10 units × $1.93), and D will have an additional allocation of the investment in the contract of $7.72 (4 units × $1.93) to each taxable year in which D receives 12 monthly payments subsequent to the death of C. The total allocable to each taxable year of C is, therefore, $1,056.30, and that allocable to each taxable year of D will be $422.52.

*Example 7.* If, in example (6), C had died at the end of the fourth year, in the fifth year D would have received a payment of $240 (that portion of the $600 that C would have received which is in the same ratio that 4 units bear to 10 units) and would thus have received $174.80 less than the portion of the investment in the contract allocable to each of D's taxable years. In these circumstances, D would be entitled to elect to redetermine the portion of the investment in the contract allocable to the taxable year of election and all subsequent years. The new amount allocable thereto would be found by dividing the $174.80 difference by D's life expectancy as of the first day of the first period for which D received an amount as an annuity in the sixth year of the annuity contract, and adding the result to D's originally determined allocation of $414.80.

(c) *Expected return for term certain.* In the case of a contract providing for specific periodic payments which are to be paid for a term certain such as a fixed number of months or years, without regard to life expectancy, the expected return is determined by multiplying the fixed number of years or months for which payments are to be made on or after the annuity starting date by the amount of the payment provided in the contract for each such period.

(d) *Expected return with respect to amount certain.* In the case of contracts involving no life or lives as a measurement of their duration, but under which a determinable total amount is to be paid in installments of lesser amounts paid at periodic intervals, the expected return shall be the total amount guaranteed. If an amount is to be paid periodically until a fund plus interest at a fixed rate is exhausted, but further payments may be made thereafter because of earnings at a higher interest rate, this paragraph shall apply to the total amount anticipatable as a result of the amount of the fund plus the fixed interest thereon. Any amount which may be paid as the result of earnings at a greater interest rate shall be disregarded in determining the expected return. If such an amount is later received, it shall be considered an amount not received as an annuity after the annuity starting date. See paragraph (b)(2) of §1.72–11.

(e) *Expected return where two or more annuity elements providing for fixed payments are acquired for a single consideration.* (1) In the case of a contract described in paragraph (a)(2) of §1.72–2, which provides for specified payments to be made under two or more annuity elements, the expected return shall be found for the contract as a whole by aggregating the expected returns found with respect to each annuity element. If individual life annuity elements are involved (including joint and survivor annuities where the primary annuitant died before January 1, 1954) the expected return for each of them shall be determined in the manner prescribed in paragraph (a) of this section. If joint and survivor annuity elements are involved, the expected return for such elements shall be determined under the appropriate subparagraph of paragraph (b) of this section. If terms certain or amounts certain are involved, the expected returns for such elements shall be determined under paragraph (c) or (d) of this section, respectively.

(2) The aggregate expected return found in accordance with the rules set forth in subparagraph (1) of this paragraph shall constitute the expected return for the contract as a whole. The investment in the contract shall be divided by the amount thus determined to obtain the exclusion ratio for the contract as a whole, This exclusion ratio shall be applied to all amounts received as an annuity under the contract by any recipient (in accordance with the provisions of §1.72–4), except in the case of amounts received by a surviving annuitant under a joint and survivor annuity element to which the provisions of section 72(i) and paragraph (b)(3) of this section would apply if it were a separate contract. See subparagraph (3) of this paragraph.

(3) In the case of a contract providing two or more annuity elements, one of which is a joint and survivor annuity element of the type described in section 72(i) and paragraph (b)(3) of this section, the general exclusion ratio for the contract as a whole, for the purpose of computations with respect to all the other annuity elements shall be determined in accordance with the principles of subparagraphs (1) and (2) of this paragraph. A special exclusion ratio shall thereafter be determined for the surviving annuitant receiving payments under the annuity element described in section 72(i) and paragraph (b)(3) of this section by using the investment in the contract and the expected return determined in accordance with the provisions of paragraph (b)(3) of this section.

(4) In the case of a contract providing for payments to be made to two persons in the manner described in paragraph (b)(6) of this section, the expected return is to be computed as though there were two joint and survivor annuities under the same contract, in the following manner. First, the multiple appropriate to the ages (as of the annuity starting date) and, if applicable, sexes of the annuitants involved shall be found in Table II or VI (whichever is applicable) of §1.72–9 and adjusted, if necessary, in the manner described in paragraph (a)(2) of this section. Second, the multiple so found shall be applied to the sum of the payments to be made each year to both annuitants. The result is the expected return for the contract as a whole.

(5) For rules relating to expected return where two or more annuity elements are acquired for a single consideration and one or more of such elements does not specify a fixed payment for each period, see paragraph (f) of this section.

(f) *Expected return with respect to obligations providing for payments described in paragraph (b)(3) of §1.72–2.* (1) If a contract to which section 72 applies provides only for payments to be made in a manner described in paragraph (b)(3) of §1.72–2, the expected return for such contract as a whole shall be an amount equal to the investment in the contract found in accordance with section 72(c)(1) and §1.72–6, as adjusted for any refund feature in accordance with §1.72–7.

(2) If a contract to which section 72 applies provides for annuity elements, one or more of which (but not all) provide for payments to be made in a manner described in paragraph (b)(3) of §1.72–2:

(i) With respect to the portion of the contract providing for annuity elements to which paragraph (b)(3) of

§ 1.72–2 does not apply, the expected return shall be the aggregate of the expected returns found for each of such elements in accordance with the appropriate paragraph of this section; and

(ii) With respect to all annuity elements to which paragraph (b)(3) of § 1.72–2 does apply, the expected return for all such elements shall be an amount equal to the portion of the investment in the contract allocable to such elements in accordance with the provisions of paragraph (e)(2)(ii) of § 1.72–4 and paragraph (b)(3)(ii)(*b*) of § 1.72–6.

(g) *Expected return with respect to contracts subject to § 1.72–6(d).* In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, an expected return is computed using the multiples in Tables I through IV of § 1.72–9 with respect to the pre-July 1986 investment in the contract and a second expected return is computed using the multiples in Tables V through VIII of § 1.72–9 with respect to the post-June 1986 investment in the contract.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, as amended by T.D. 8115, 51 FR 45694, Dec. 19, 1986]

### § 1.72–6 Investment in the contract.

(a) *General rule.* (1) For the purpose of computing the ''investment in the contract'', it is first necessary to determine the ''aggregate amount of premiums or other consideration paid'' for such contract. See section 72(c)(1). This determination is made as of the later of the annuity starting date of the contract or the date on which an amount is first received thereunder as an annuity. The amount so found is then reduced by the sum of the following amounts in order to find the investment in the contract:

(i) The total amount of any return of premiums or dividends received (including unrepaid loans or dividends applied against the principal or interest on such loans) on or before the date on which the foregoing determination is made, and

(ii) The total of any other amounts received with respect to the contract on or before such date which were excludable from the gross income of the recipient under the income tax law applicable at the time of receipt.

Amounts to which subdivision (ii) of this subparagraph applies shall include, for example, amounts considered to be return of premiums or other consideration paid under section 22(b)(2) of the Internal Revenue Code of 1939 and amounts considered to be an employer-provided death benefit under section 22(b)(1)(B) of such Code. For rules relating to the extent to which an employee or his beneficiary may include employer contributions in the aggregate amount of premiums or other consideration paid, see § 1.72–8. If the aggregate amount of premiums or other consideration paid for the contract includes amounts for which deductions were allowed under section 404 as contributions on behalf of a self-employed individual, such amounts shall not be included in the investment in the contract.

(2) For the purpose of subparagraph (1) of this paragraph, amounts received subsequent to the receipt of an amount as an annuity or subsequent to the annuity starting date, whichever is the later, shall be disregarded. See, however, § 1.72–11.

(3) The application of this paragraph may be illustrated by the following examples:

*Example 1.* In 1950, B purchased an annuity contract for $10,000 which was to provide him with an annuity of $1,000 per year for life. He received $1,000 in each of the years 1950, 1951, 1952, and 1953, prior to the annuity starting date (January 1, 1954). Under the Internal Revenue Code of 1939, $300 of each of these payments (3 percent of $10,000) was includible in his gross income, and the remaining $700 was excludable therefrom during each of the taxable years mentioned. In computing B's investment in the contract as of January 1, 1954, the total amount excludable from his gross income during the years 1950 through 1953 ($2,800) must be subtracted from the consideration paid ($10,000). Accordingly, B's investment in the contract as of January 1, 1954, is $7,200 ($10,000 less $2,800).

*Example 2.* In 1945, C contracted for an annuity to be paid to him beginning December 31, 1960. In 1945 and in each successive year until 1960, he paid a premium of $5,000. Assuming he receives no payments of any kind under the contract until the date on which he receives the first annual payment as an annuity (December 31, 1960), his investment in the contract as of the annuity starting date (December 31, 1959) will be $75,000 ($5,000 paid each year for the 15 years from 1945 to 1959, inclusive).

*Example 3.* Assume the same facts as in example (2), except that prior to the annuity starting date C has already received from the insurer dividends of $1,000 each in 1949, 1954, and 1959, such dividends not being includible in his gross income in any of those years. C's investment in the contract, as of the annuity starting date, will then be $72,000 ($75,000–$3,000).

(b) *Allocation of the investment in the contract where two or more annuity elements are acquired for a single consideration.* (1) In the case of a contract described in §1.72–2(a)(2) which provides for two or more annuity elements, the investment in the contract determined under paragraph (a) shall be allocated to each of the annuity elements in the ratio that the expected return under each annuity element bears to the aggregate of the expected returns under all the annuity elements. The exclusion ratio for the contract as a whole shall be determined by dividing the investment in the contract (after adjustment for the present value of any or all refund features) by the aggregate of the expected returns under all the annuity elements. This may be illustrated by the following examples:

*Example 1.* If a contract provides for annuity payments of $1,000 per year for life (with no refund feature) to both A and B, a male and female, respectively, each 70 years of age as of the annuity starting date, such contract is acquired for consideration of $19,575 (without regard to whether paid by A, B, or both), and there is no post-June 1986 investment in the contract, the investment in the contract shall be allocated by determining the exclusion ratio for the contract as a whole in the following manner:

| | |
|---|---|
| Expectancy of A under Table I and §1.72–5(a)(2), 11.6 (12.1–0.5), multiplied by $1,000 | $11,600 |
| Plus: Expectancy of B computed in a similar manner ($1,000×14.5 [15.0 − 0.5]) | 14,500 |
| Total expected return | 26,100 |

The exclusion ratio for both A and B is then $19,575÷$26,100, or 75 percent. A and B shall each exclude from gross income three-fourths ($750) of each $1,000 annual payment received and shall include the remaining one-fourth ($250) of each $1,000 annual payment received in gross income.

*Example 2.* Assume the same facts as in example (1) except that of the total investment in the contract of $19,575, the pre-July 1986 investment in the contract is $10,000. If the election described in §1.72–6(d)(6) is made with respect to the contract, the investment in the contract shall be allocated by determining an exclusion ratio for the contract as a whole based on separately computed exclusion ratios with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract in the following manner:

| | |
|---|---|
| Expectancy of A under Table I and §1.72–5(a)(2), 11.6 (12.1–0.5), multiplied by $1,000 | $11,600 |
| Plus: Expectancy of B under Table I and §1.72–5(a)(2), 14.5 (15.0–0.5), multiplied by $1,000 | $14,500 |
| Pre-July 1986 expected return | $26,100 |
| Expectancy of A under Table V and §1.72–5(a)(2), 15.5 (16.0–0.5), multiplied by $1,000 | $15,500 |
| Plus: Expectancy of B under Table V and §1.72–5(a)(2), 15.5 (16.0–0.5), multiplied by $1,000 | $15,500 |
| Post-June 1986 expected return | $31,000 |
| Pre-July 1986 exclusion ratio ($10,000÷$26,100) | 38.3 |
| Post-June 1986 exclusion ratio ($9,575÷31,000) | 30.9 |

A and B shall each exclude from gross income $692 (38.3 percent of $1,000+30.9 percent of $1,000) of each $1,000 payment and include the remaining $308 in gross income

(2) In the case of a contract providing for specified annual annuity payments to be made to two persons during their joint lives and the payment of the aggregate of the two individual payments to the survivor for his life, the investment in the contract shall be allocated in accordance with the provisions of subparagraph (1) of this paragraph. For this purpose, the investment in the contract (without regard to the fact that differing amounts may have been contributed by the two annuitants) shall be divided by the expected return determined in accordance with paragraph (e)(4) of §1.72–5. The resulting exclusion ratio shall then be applied to any amounts received as an annuity by either annuitant.

(3) In the case of a contract providing two or more annuity elements, one or more of which provides for payments to be made in a manner described in paragraph (b)(3) of §1.72–2, the investment in the contract shall be allocated to the various annuity elements in the following manner.

(i) If all the annuity elements provide for payments to be made in the manner described in paragraph (b)(3) of §1.72–2, the investment in the contract shall be allocated on the basis of the amounts received by each recipient by apportioning the amount determined to be excludable under that section to each recipient in the same ratio as the total of the amounts received by him in the taxable year bears to the total of the amounts received by all recipients during the same period; and

(ii) If one or more, but not all, of the annuity elements provide for payments to be made in a manner described in paragraph (b)(3) of § 1.72–2:

(*a*) With respect to all annuity elements to which that section does not apply, the investment in the contract for all such elements shall be the portion of the investment in the contract as a whole (found in accordance with the provisions of this section) which is properly allocable to all such elements; and

(*b*) With respect to all annuity elements to which paragraph (b)(3) of § 1.72–2 does apply, the investment in the contract for all such elements shall be the investment in the contract as a whole (found in accordance with the provisions of this section) as reduced by the portion thereof determined under (*a*) of this subdivision.

For the purpose of determining, pursuant to (*a*) of this subdivision, the portion of the investment in the contract as a whole properly allocable to a particular annuity element, reference shall be made to the present value of such annuity element determined in accordance with paragraph (e)(1)(iii) (*b*) of § 1.101–2.

(iii) In the case of a contract to which paragraph (d) of this section applies, this paragraph (b) is applied in the manner prescribed in paragraph (d) and, in particular, paragraph (d)(5)(v) of this section.

(c) *Special rules.* (1) For the special rule for determining the investment in the contract for a surviving annuitant in cases where the prior annuitant of a joint and survivor annuity contract died in 1951, 1952, or 1953, see paragraph (b)(3) of § 1.72–5.

(2) For special rules relating to the determination of the investment in the contract where employer contributions are involved, see § 1.72–8. See also paragraph (b) of § 1.72–16 for a special rule relating to the determination of the premiums or other consideration paid for a contract where an employee is taxable on the premiums paid for life insurance protection that is purchased by and considered to be a distribution from an exempt employees' trust.

(3) For the determination of an adjustment in investment in the contract in cases where a contract contains a refund feature, see § 1.72–7.

(4) In the case of ''face-amount certificates'' described in section 72(1), the amount of consideration paid for purposes of computing the investment in the contract shall include any amount added to the holder's basis by reason of section 1232(a)(3)(E) (relating to basis adjustment for amount of original issue discount ratably included in gross income as interest under section 1232(a)(3)).

(d) *Pre-July 1986 and post-June 1986 investment in the contract.* (1) This paragraph (d) applies to an annuity contract if:

(i) The investment in the contract includes a pre-July 1986 investment in the contract and a post-June 1986 investment in the contract (both as defined in § 1.72–6(d)(3));

(ii) The use of a multiple found in Tables I through VIII of § 1.72–9 is required to determine the expected return under the contract; and

(iii) The election described in paragraph (d)(6) of this section is made with respect to the contract.

(2) In the case of annuity contract to which this paragraph (d) applies—

(i) All computations required to determine the amount excludable from gross income shall be performed separately with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract as if each such amount were the entire investment in the contract;

(ii) The multiples in Tables I through IV shall be used for computations involving the pre-July 1986 investment in the contract and the multiples in Tables V through VIII shall be used for computations involving the post-June 1986 investment in the contract; and

(iii) The amount excludable from gross income shall be the sum of the amounts determined under the separate computations required by paragraph (d)(2)(i) of this section.

(3) For purposes of the regulations under section 72, the pre-July 1986 investment in the contract and post-June 1986 investment in the contract are determined in accordance with the following rules:

(i)(A) Except as provided in §1.72–9, if the annuity starting date of the contract occurs before July 1, 1986, the pre-July 1986 investment in the contract is the total investment in the contract as of the annuity starting date;

(B) Except as provided in §1.72–9, if the annuity starting date of the contract occurs after June 30, 1986, and the contract does not provide for a disqualifying form of payment or settlement, the pre-July 1986 investment in the contract is the investment in the contract computed as of June 30, 1986, as if June 30, 1986, had been the later of the annuity starting date of the contract or the date on which an amount is first received thereunder as an annuity;

(C) If the annuity starting date of the contract occurs after June 30, 1986, and the contract provides, at the option of the annuitant or of any other person (including, in the case of an employee's annuity, an option exercisable only by, or with the consent of, the employer), for a disqualifying form of payment or settlement, the pre-July 1986 investment in the contract is zero (*i.e.*, the total investment in the contract is post-June 1986 investment in the contract).

(ii) The post-June 1986 investment in the contract is the amount by which the total investment in the contract as of the annuity starting date exceeds the pre-July 1986 investment in the contract.

(iii) For purposes of paragraph (d)(3)(i) of this section, a disqualifying form of payment or settlement is any form of payment or settlement (whether or not selected) that permits the receipt of amounts under the contract in a form other than a life annuity. For example, each of the following options provides for a disqualifying form of payment or settlement:

(A) An option to receive a lump sum in full discharge of the obligation under the contract.

(B) An option to receive an amount under the contract after June 30, 1986, and before the annuity starting date.

(C) An option to receive an annuity for a period certain.

(D) An option to receive payments under a refund feature (within the meaning of paragraphs (b) and (c) of §1.72–7) that is substantially equivalent to an annuity for a period certain.

(E) An option to receive a temporary life annuity (within the meaning of §1.72–5 (a)(3)) that is substantially equivalent to an annuity for a period certain.

An option to receive alternative forms of life annuity is not a disqualifying option for purposes of paragraph (d)(3)(i) of this section. Thus, if the sole options provided under a contract are a single life annuity and a joint and survivor life annuity, paragraph (d)(3)(i)(C) of this section does not apply to such contract.

(iv) For purposes of paragraph (d)(3)(iii) of this section, a refund feature is substantially equivalent to an annuity for a period certain if its value determined under Table VII of §1.72–9 exceeds 50 percent. Similarly, a temporary life annuity is substantially equivalent to an annuity for a period certain if the multiple determined under Table VIII of §1.72–9 exceeds 50 percent of the maximum duration of the annuity.

(4) In any separate computation under this paragraph (d), only the applicable portion of other amounts (such as the total expected return under the contract, or the total amount guaranteed under the contract as of the annuity starting date) shall be taken into account if the use of the entire amount in such computation is inconsistent with the use in the computation of only a portion of the investment in the contract. For example, such use is generally inconsistent if the computation requires a comparison of the investment in the contract and such other amount for the purpose of using the greater (or lesser) amount or the difference between the two. For purposes of the first sentence of this paragraph (d)(4), the applicable portion is the amount that bears the same ratio to the entire amount as the pre-July 1986, investment in the contract or the post-June 1986 investment in the contract, whichever is applicable, bears to the total investment in the contract as of the annuity starting date.

(5) *Application to particular computations.* (i) In the case of a contract to which this paragraph (d) applies, the

exclusion ratio for purposes of § 1.72–4 (a) is the sum of the exclusion ratios separately computed in accordance with this paragraph (d). The exclusion ratio with respect to the pre-July 1986 investment in the contract is determined by dividing the pre-July 1986 investment in the contract by the expected return as found under § 1.72–5 by applying the appropriate multiples of Tables I through IV of § 1.72–9. Similarly, the exclusion ratio with respect to the post-June 1986 investment in the contract is determined by dividing the post-June 1986 investment in the contract by the expected return as found under § 1.72–5 by applying the appropriate multiples in Tables V through VIII of § 1.72–9.

(ii) The applicability of § 1.72–4(d)(2) to a contract to which this paragraph (d) applies shall be determined separately with respect to the post-June 1986 investment in the contract and the pre-July 1986 investment in the contract and in each such determination only the applicable portion of the total expected return under the contract shall be taken into account. If § 1.72–4(d)(2) applies with respect to either such investment in the contract, the separately computed exclusion ratio shall be considered to be the applicable portion of 100 percent.

(iii) If § 1.72–4(d)(3) applies to a contract to which this paragraph (d) applies—

(A) The applicable portions (as defined in paragraph (d)(4) of this section) of payments received under the contract for a taxable year shall be separately computed;

(B) The pre-July 1986 investment in the contract and the post-June 1986 investment in the contract shall be separately allocated to the taxable year; and

(C) The separate applicable portions of the payments received under the contract for the taxable year shall be considered to be amounts received as an annuity (for which the exclusion ratio is 100 percent) only to the extent they do not exceed the portions of the corresponding investments in the contract which are properly allocable to that year.

See the example in § 1.72–4(d)(3)(v).

(iv) If § 1.72–4(e) applies to a contract to which this paragraph (d) applies, the exclusion ratio shall be separately computed with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. For purposes of the separate computations under § 1.72–4(e)(2)(ii), only the applicable portion of payments received shall be taken into account and the exclusion ratio (100%) shall be applied to the separately computed portion allocated to each participant.

(v) If paragraph (b)(3) of this section applies to a contract to which this paragraph (d) applies, separate allocations are required with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract.

For purposes of the separate computations required to determine the portion of the investment in the contract properly allocable to a particular annuity element, only the applicable portion of the present value of the annuity element determined in accordance with § 1.101–2(e)(1)(iii)(b) is taken into account.

(vi) If § 1.72–7 applies to a contract to which this paragraph (d) applies, separate computations are required to determine the adjustment to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. For purposes of such separate computations, only the applicable portions of the amounts described in § 1.72–7 (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(vii)(B), and (d)(1)(ii) are taken into account. Similarly, in the case of computations with respect to the guarantee of a specified amount under § 1.72–7(d)(1), only the applicable portion of such amount is taken into account.

(6) This paragraph (d) applies to a contract only if the first taxpayer to receive an amount as an annuity under the contract elects to perform separate computations with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract as if each such amount were the entire investment in contract. If two or more annuitants receive an amount as an annuity under the contract at the same time (such as under a joint-and-last-survivorship annuity

contract), an election by one of the annuitants is treated as an election by each of the annuitants. The election is made by attaching a statement to the first return filed by the taxpayer for the first taxable year in which an amount is received as an annuity under the contract. The statement must indicate that the taxpayer is electing to apply the provisions of paragraph (d) of §1.72–6, and must also contain the name, address, and taxpayer identification number of each annuitant under the contract, and the amount of the pre-July 1986 investment in the contract.

(7) If the investment in the contract includes a post-June 1986 investment in the contract and the election described in paragraph (d)(6) of this section is not made—

(i) The amount excludable from gross income shall be determined without regard to the separate computations described in this paragraph (d); and

(ii) Only the multiples found in Tables V through VIII shall be used in determining the amount excludable from gross income.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6676, 28 FR 10134, Sept. 17, 1963; T.D. 7311, 39 FR 11880, Apr. 1, 1974; T.D. 8115, 51 FR 45700, Dec. 19, 1986; 52 FR 10223, Mar. 31, 1987]

### § 1.72–7 Adjustment in investment where a contract contains a refund feature.

(a) *Definition of a contract containing a refund feature.* A contract to which section 72 applies, contains a refund feature if:

(1) The total amount receivable as an annuity under such contract depends, in whole or in part, on the continuing life of one or more persons,

(2) The contract provides for payments to be made to a beneficiary or the estate of an annuitant on or after the death of the annuitant if a specified amount or a stated number of payments has not been paid to the annuitant or annuitants prior to death, and

(3) Such payments are in the nature of a refund of the consideration paid. See paragraph (c)(1) of §1.72–11.

(b) *Adjustment of investment for the refund feature in the case of a single life annuity.* Where a single life annuity contract to which section 72 applies contains a refund feature and the special rule of paragraph (d) of this section does not apply, the investment in the contract shall be adjusted in the following manner:

(1) Determine the number of years necessary for the guaranteed amount to be fully paid by dividing the maximum amount guaranteed as of the annuity starting date by the amount to be received annually under the contract to the extent such amount reduces the guaranteed amount. The number of years should be stated in terms of the nearest whole year, considering for this purpose a fraction of one-half or more as an additional whole year.

(2) Consult Table III or VII (whichever is applicable) of §1.72–9 for the appropriate percentage under the whole number of years found in subparagraph (1) of this paragraph and the age (as of the annuity starting date) and, if applicable, sex of the annuitant.

(3) Multiply the percentage found in subparagraph (2) of this paragraph by whichever of the following is the smaller: (i) The investment in the contract found in accordance with §1.72–6 or (ii) the total amount guaranteed as of the annuity starting date.

(4) Subtract the amount found in subparagraph (3) of this paragraph from the investment in the contract found in accordance with §1.72–6.

The resulting amount is the investment in the contract adjusted for the present value of the refund feature without discount for interest and is to be used in determining the exclusion ratio to be applied to the payments received as an annuity. The percentage found in Tables III or VII shall not be adjusted in a manner described in paragraph (a)(2) of §1.72–5. These principles may be illustrated by the following examples:

*Example 1.* On January 1, 1954, a husband, age 65, purchased for $21,053, an immediate installment refund annuity payable $100 per month for life. The contract provided that in the event the husband did not live long enough to recover the full purchase price, payments were to be made to his wife until the total payments under the contract equaled the purchase price. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

| | |
|---|---|
| Cost of the annuity contract (investment in the contract, unadjusted) | $21,053 |
| Amount to be received annually | $1,200 |
| Number of years for which payment guaranteed ($21,053 divided by $1,200) | 17.5 |
| Rounded to nearest whole number of years | 18 |
| Percentage located in Table III for age 65 (age of the annuitant as of the annuity starting date) and 18 (the number of whole years) (percent) | 30 |
| Subtract value of the refund feature to the nearest dollar (30 percent of $21,053) | $6,316 |
| Investment in the contract adjusted for the present value of the refund feature without discount for interest | $14,737 |

*Example 2.* Assume the same facts as in example (1), except that the total investment in the contract was made after June 30, 1986. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed as follows:

| | |
|---|---|
| Cost of the annuity contract (investment in the contract, unadjusted) | $21,053 |
| Amount to be received annually | $1,200 |
| Number of years for which payment guaranteed ($21,053÷$1,200) | 17.5 |
| Rounded to nearest whole number of years | 18 |
| Percentage in Table VII for age 65 and 18 years (percent) | 15 |
| Subtract value of the refund feature to the nearest dollar (15 percent of $21,053) | $3,158 |
| Investment in the contract adjusted for the present value of the refund feature without discount for interest | $17,895 |

*Example 3.* Assume the same facts as in example (1), except that the pre-July 1986 investment in the contract is $10,000 and the post-June 1986 investment in the contract is $11,053. If the annuitant makes the election described in §1.72–6(d)(6), separate computations must be performed pursuant to §1.72–6(d) to determine the adjusted investment in the contract. The pre-July 1986 investment in the contract and the post-June 1986 investment in the contract adjusted for the purpose of determining the exclusion ratios are, respectively, $7,000 and $9,395, determined as follows:

| | |
|---|---|
| Pre-July 1986 investment in the contract (unadjusted) | $10,000 |
| Pre-July 1986 portion of the amount to be received annually ($10,000/$21,053×$1,200) | $570.00 |
| Number of years for which payment guaranteed ($10,000÷$570) | 17.50 |
| Rounded to nearest whole number of years | 18 |
| Percentage in Table III for age 65 and 18 years (percent) | 30 |
| Subtract value of the refund feature to the nearest dollar (30 percent of $10,000) | $3,000 |
| Pre-July 1986 investment in the contract adjusted for the present value of the refund feature without discount for interest | $7,000 |
| Post-June 1986 investment in the contract (unadjusted) | $11,053 |
| Post-June 1986 portion of the amount to be received annually ($11,053/$21,053×$1,200) | $630 |
| Number of years for which payment guaranteed ($11,053÷$630) | 17.54 |
| Rounded to nearest whole number of years | 18 |
| Percentage in Table VII for age 65 and 18 years (percent) | 15 |
| Subtract value of the refund feature to the nearest dollar (15 percent of $11,053) | $1,658 |
| Post-June 1986 investment in the contract adjusted for the present value of the refund feature without discount for interest | $9,395 |

If, in the above examples, the guaranteed amount had exceeded the investment in the contract (or applicable portion thereof), the percentage found in Table III or VII (whichever is applicable) should have been applied to the lesser of these amounts since any excess of the guaranteed amount over the investment in the contract (as found under §1.72–6) would not have constituted a refund of premiums or other consideration paid. In such a case, however, a different multiple might have been obtained from Table III or VII (whichever is applicable) since the number of years for which payments were guaranteed would have been greater.

(c) *Adjustment of investment for the refund feature in the case of a joint and survivor annuity.* (1) Except as provided in paragraph (c)(2) of this section, if a joint and survivor annuity contract described in paragraph (b) (1), (2) or (6) of §1.72–5 contains a refund feature and the special rule of paragraph (d) of this section does not apply, the investment in the contract shall be adjusted in the following manner:

(i) Find the percentage determined under the following formula:

$$V = \frac{\sum_{t=0}^{N-1} \frac{d_{x+t}}{l_x}\left[\left(N - \tfrac{1}{2} - t\right) - P\left(\frac{T_{y+t+1} - T_{y+t+M+1}}{l_y}\right)\right]}{N}$$

In which:

V = The percentage, rounded to the nearest whole percent,
x = The age at the nearest birthday of the primary annuitant,
y = The age at the nearest birthday of the survivor annuitant,
N = The guaranteed amount divided by the annual annuity payable to the primary annuitant, rounded to the nearest integer,
P = The annual annuity continued to the survivor annuitant divided by the annual annuity payable to the primary annuitant,

$$M = \frac{N - 1/2 - t,}{P}$$

$$l_x = \text{The number of survivors at age x, } d = l_x - l_{x+1}, \text{ and}$$

$$T_x = \sum_{s=0}^{\infty} 1/2\left(l_{x+s} + l_{x+s+1}\right).$$

(ii) Multiply the percentage found in paragraph (c)(1)(i) of this section by the lesser of (A) the investment in the contract found in accordance with §1.72–6, or (B) the total amount guaranteed as of the annuity starting date.

(iii) Subtract the amount found in paragraph (c)(1)(ii) of this section from the investment in the contract found in accordance with §1.72–6.

In the case of a contract providing for payments to be made to two persons in the manner described in paragraph (b)(6) of §1.72–5, this paragraph (c)(1) is applied as though the older person were the primary annuitant and the younger person were the survivor annuitant. For purposes of this paragraph (c)(1), the number of survivors at age$_x$ ($l_x$) is determined under the following table:

| x | lx |
|---|---|
| 5 | 1000000. |
| 6 | 999729. |
| 7 | 999493. |
| 8 | 999284. |
| 9 | 999069. |
| 10 | 998849. |
| 11 | 998620. |
| 12 | 998382. |
| 13 | 998135. |
| 14 | 997876. |
| 15 | 997606. |
| 16 | 997322. |
| 17 | 997025. |
| 18 | 996714. |
| 19 | 996387. |
| 20 | 996044. |
| 21 | 995684. |
| 22 | 995304. |
| 23 | 994905. |
| 24 | 994484. |
| 25 | 994041. |
| 26 | 993573. |
| 27 | 993080. |
| 28 | 992563. |
| 29 | 992024. |
| 30 | 991461. |
| 31 | 990876. |
| 32 | 990269. |
| 33 | 989638. |
| 34 | 988984. |
| 35 | 988303. |
| 36 | 987593. |
| 37 | 986846. |
| 38 | 986055. |
| 39 | 985210. |
| 40 | 984298. |
| 41 | 983310. |
| 42 | 982230. |
| 43 | 981046. |
| 44 | 979742. |
| 45 | 978302. |
| 46 | 976709. |
| 47 | 974945. |
| 48 | 972992. |
| 49 | 970832. |
| 50 | 968447. |
| 51 | 966000. |
| 52 | 963313. |
| 53 | 960375. |
| 54 | 957175. |
| 55 | 953705. |
| 56 | 949954. |
| 57 | 945912. |
| 58 | 941568. |
| 59 | 936908. |
| 60 | 931903. |
| 61 | 926451. |

| x | lx |
|---|---|
| 62 | 920540. |
| 63 | 914090. |
| 64 | 907011. |
| 65 | 899221. |
| 66 | 890428. |
| 67 | 880797. |
| 68 | 870298. |
| 69 | 858904. |
| 70 | 846565. |
| 71 | 832316. |
| 72 | 816861. |
| 73 | 800078. |
| 74 | 781837. |
| 75 | 762012. |
| 76 | 740743. |
| 77 | 717689. |
| 78 | 692780. |
| 79 | 665977. |
| 80 | 637260. |
| 81 | 607339. |
| 82 | 575531. |
| 83 | 541919. |
| 84 | 506647. |
| 85 | 469931. |
| 86 | 432459. |
| 87 | 394138. |
| 88 | 355393. |
| 89 | 316712. |
| 90 | 278663. |
| 91 | 242020. |
| 92 | 207150. |
| 93 | 174602. |
| 94 | 144828. |
| 95 | 118151. |
| 96 | 94871.7 |
| 97 | 74863.6 |
| 98 | 58042.2 |
| 99 | 44176.1 |
| 100 | 32956.4 |
| 101 | 24044.8 |
| 102 | 17104.1 |
| 103 | 11815.5 |
| 104 | 7886.75 |
| 105 | 5054.94 |
| 106 | 3086.95 |
| 107 | 1778.82 |
| 108 | 955.465 |
| 109 | 470.955 |
| 110 | 208.668 |
| 111 | 80.7899 |
| 112 | 26.2340 |
| 113 | 6.69620 |
| 114 | 1.19385 |
| 115 | .111460 |

(2) If the multiples in Tables I through IV of §1.72–9 are used to determine any portion of the expected return under a contract described in paragraph (c)(1) of this section, only the post-June 1986 investment in the contract (if any) shall be adjusted in the manner described in paragraph (c)(1) of this section, and the pre-July 1986 investment in the contract shall, in the case of a contract described in paragraph (b) (1) or (6) of §1.72–5, be adjusted in the following manner:

(i) Determine the number of years necessary for the guaranteed amount to be fully paid by dividing the maximum amount guaranteed as of the annuity starting date by the amount to be received annually under the contract. The number of years should be stated in terms of the nearest whole year, considering for this purpose a fraction of one-half or more as an additional whole year.

(ii) Consult Table III of §1.72–9 for the appropriate percentages under the whole number of years found in subdivision (i) of this subparagraph and the age (as of the annuity starting date) and sex of each annuitant. If the annuitants are not of the same sex, substitute for the female annuitant a male annuitant 5 years younger, or for the male annuitant a female annuitant 5 years older, so that Table III will be entered in both cases with the ages of annuitants of the same sex.

(iii) Find the sum of the two percentages found in accordance with subdivision (ii) of this subparagraph.

(iv) To the age of the elder of the two annuitants (as determined under subdivision (ii) of this subparagraph), add the number of years (indicated in the table below) opposite the number of years by which such annuitants' ages differ:

| Number of years difference in age (2 male annuitants or 2 female annuitants) | Addition to older age in years |
|---|---|
| 0 to 1, inclusive | 9 |
| 2 to 3, inclusive | 8 |
| 4 to 5, inclusive | 7 |
| 6 to 8, inclusive | 6 |
| 9 to 11, inclusive | 5 |
| 12 to 15, inclusive | 4 |
| 16 to 20, inclusive | 3 |
| 21 to 27, inclusive | 2 |
| 28 to 42, inclusive | 1 |
| Over 42 | 0 |

(v) Consult Table III for the appropriate percentage under the whole number of years found in subdivision (i) of this subparagraph and the age and sex of the elder annuitant as adjusted under subdivision (iv) of this subparagraph.

(vi) Subtract the percentage obtained in subdivision (v) of this subparagraph from the sum of the percentages found under subdivision (iii) of this subparagraph. If the result is less than one, subdivisions (vii) and (viii) of this subparagraph shall be disregarded and no adjustment made to the investment in the contract.

(vii) Multiply the percentage found in subdivision (vi) of this subparagraph by whichever of the following is the smaller: (A) the investment in the contract found in accordance with § 1.72–6 or (B) the total amount guaranteed as of the annuity starting date.

(viii) Subtract the amount found in subdivision (vii) of this subparagraph from the investment in the contract found in accordance with § 1.72–6.

(3) The principles of this paragraph (c) may be illustrated by the following examples:

*Example 1.* Prior to July 1, 1986, Taxpayer A, a 70-year-old male, purchases a joint and last survivor annuity for $33,050. The contract provides for payments of $100 a month to be paid first to himself for life and then to B, his 40-year-old daughter, if she survives him. The contract further provides that in the event both die before ten years' payments have been made, payments will be continued to C, a beneficiary, or to C's estate, until ten years' payments have been made. If there is no post-June 1986 investment in the contract, the investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

| | |
|---|---|
| Cost of the annuity contract (investment in the contract unadjusted) | $33,050 |
| Guaranteed amount ($1,200×10) | $12,000 |
| Percentage in Table III for male, age 70 (or female, age 75) for duration of the guarantee (10) | 21 |
| Percentage in Table III for female, age 40 (or male, age 35) for duration of the guarantee (10) | 2 |
| Sum of percentages obtained | 23 |
| Difference in years of age between two males, aged 70 and 35 (or 2 females, aged 75 and 40) | 35 |
| Addition, in years, to older age | 1 |
| Percentage in Table III for male one year older than A | 22 |
| Difference between percentages obtained (23 percent less 22 percent) | 1 |
| Value of the refund feature to the nearest dollar (1 percent of $12,000) | $120 |
| Investment in the contract adjusted for present value of the refund feature | $32,930 |

*Example 2.* The facts are the same as in example (1), except that the total investment in the contract was made after June 30, 1986, A is 73 years of age, and B is A's 70 year old spouse. The percentage determined under the formula in paragraph (c)(1)(i) of this section is two percent. Thus, the amount determined under paragraph (c)(1)(ii) of this section is $240 (2 percent of $12,000), and the investment in the contract adjusted for the present value of the refund feature is $32,810 ($33,050—$240).

(4) If an annuity described in paragraph (b) of § 1.72–5 contains a refund feature and the manner of determining the adjustment to the investment in the contract (or to any part of such investment) is not prescribed or requires use of the formula in paragraph (c)(1)(i) of this section, the Commissioner will determine the amount of the adjustment upon request. The request must contain the date of birth of each annuitant, the guaranteed amount, the annual annuity payable to each annuitant, and the annuity starting date. Send the request to the Commissioner of Internal Revenue, Attention: OP:E:EP:GA, Washington, D.C. 20224.

(d) *Adjustment of investment in the contract where paragraph (b)(3) of § 1.72–2 applies to payments.* (1) If paragraph (b)(3) of § 1.72–2 applies to payments to be made under a contract and this section also applies because of the provision for a refund feature, an adjustment shall be made to the investment in the contract in accordance with this paragraph before making the computations required by paragraph (d)(3) of § 1.72–4 and paragraph (d)(7) of § 1.72–5. In the case of the guarantee of a specified amount, the adjustment shall be made by applying the appropriate multiple from Table III or VII (whichever is applicable), as otherwise determined under this section, to the investment in the contract or the guranteed amount, whichever is the lesser. The guarantee period shall be found by dividing the amount guaranteed by the amount determined by placing the payments received during the first taxable year (to guaranteed amount) on an annual basis. Thus, if monthly payments are first received by a taxpayer on a calendar year basis in August, his total payments (to the extent that they reduce the guaranteed amount) for the taxable year would be divided by 5 and multiplied by 12. The guaranteed amount would then be divided by the result of this computation to obtain the guarantee period. If the contract merely guarantees that proceeds from a unit or units of a fund shall be paid for a fixed number of years or the life (or lives) of an annuitant (or annuitants), whichever is the longer, the fixed number of years is the guarantee period. The appropriate percentage in Table III or VII shall be applied to whichever of the following is the smaller: (i) the investment in the contract; or (ii) the product of the payments received in the first taxable year, placed on an annual basis, multiplied by the number of years for which payment of the proceeds of a unit or units is guaranteed.

(2) The principles of this paragraph may be illustrated by the following examples:

*Example 1.* Taxpayer A, a 50-year-old male purchases for $25,000 a contract which provides for variable monthly payments to be paid to him for his life. The contract also provides that if he should die before receiving payments for fifteen years, payments shall continue according to the original formula to his estate or beneficiary until payments have been made for that period. Beginning with the month of September, A receives payments which total $450 for the first taxable year of receipt. This amount, placed on an annual basis, is $1,350 ($450 divided by 4, or $112.50; 112.50 multiplied by 12, or $1,350). If there is no post-June 1986 investment in the contract, the guaranteed amount is considered to be $20,250 ($1,350×15), and the multiple from Table III (found in the same manner as in paragraph (b) of this section), 9 percent, applied to $20,250 (since this amount is less than the investment in the contract), results in a refund adjustment of $1,822,50. The latter amount, subtracted from the investment in the contract of $25,000, results in an adjusted investment in the contract of $23,177.50. If A dies before receiving payments for 15 years and the remaining payments are made to B, his beneficiary, B shall exclude the entire amount of such payments from his gross income until the amounts so received by B, together with the amount received by A and excludable from A's gross income, equal or exceed $25,000. Any excess and any payments thereafter received by B shall be fully includible in gross income.

*Example 2.* Assume the same facts as in example (1), except that the total investment in the contract was made after June 30, 1986. The applicable multiple found in Table VII is 3 percent. When this is applied to the guaranteed amount of $20,250, it results in a refund adjustment of $607.50. The adjusted investment in the contract in $24,392.50 ($25,000—$607.50).

(e) *Adjustment of the investment in the contract where more than one annuity element is provided for a single consideration.* In the case of contracts to which paragraph (b) of § 1.72–6 applies for the purpose of allocating the investment in the contract to two or more annuity elements which are provided for a single consideration, if one or more of such elements involves a refund feature, the portion of the investment in the contract properly allocable to each such element shall be adjusted for the refund feature before aggregating all the investments in order to obtain the exclusion ratio which is to apply to the contract as a whole.

*Example 1.* If taxpayer A, an insured 70 years of age, upon maturity of an endowment policy which cost him a net amount of $86,000, elected a dual settlement consisting of (1) monthly payments for his life aggregating $4,146 per year with 10 years' payments certain, and (2) monthly payments for his 60-year-old brother, B, aggregating $2,820 per year with 20 years' payments certain, the exclusion ratio to be used by both A and B if there is no post-June 1986 investment in the contract would be determined in the following manner:

| | |
|---|---|
| A's expected return (A's payments per year of $4,146 multiplied by his life expectancy from Table 1 of 12.1) | $50,166.60 |
| B's expected return (B's payments per year of $2,820 multiplied by his life expectancy from Table 1 of 18.2) | $51,324.00 |
| Sum of expected returns to be used in determining exclusion ratio | $101,490.60 |
| Percentage of total expected return attributable to A's expectancy of life ($50,166.60÷$101,490.60) | 49.4 |
| Percentage of total expected return attributable to B's expectancy of life ($51,324÷$101,490.60) | 50.6 |
| Portion of investment in the contract allocable to A's annuity (49.4 percent of $86,000) | $42,484.00 |
| Portion of investment in the contract allocable to B's annuity (50.6 percent of $86,000) | $43,516.00 |
| Value of the refund feature with respect to A's annuity (percentage from Table III for male, age 70, and duration 10, or 21 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $41,460) | $8,707.00 |
| A's allocable portion of the investment in the contract adjusted for refund feature ($42,484 less $8,707.00) | $33,777.00 |
| Value of the refund feature with respect to B's annuity (percentage from Table III for male, age 60, and duration 20, or 25 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $43,516) | $10,879.00 |

| | |
|---|---|
| B's allocable portion of the investment in the contract adjusted for refund feature ($43,516 less $10,879.00) | $32,637.00 |
| Sum of A's and B's allocable portions of the investment in the contract after adjustment for the refund feature | $66,414.00 |
| Exclusion ratio for the contract as a whole (total adjusted investment in the contract, $66,414, divided by the total expected return from above, $101,490.60) (percent) | 65.4 |

*Example 2.* Assume the same facts as in example (1) except that the total investment in the contract was made after June 30, 1986. The exclusion ratio to be used by both A and B would be 56.9 percent, determined as follows:

| | |
|---|---|
| A's expected return (A's payments per year of $4,146 multiplied by his life expectancy from Table V of 16.0) | $66,336.00 |
| B's expected return (B's payments per year of $2,820 multiplied by his life expectancy from Table V of 24.2) | $68,244.00 |
| Sum of expected returns to be used in determining exclusion ratio | $134,580.00 |
| Percentage of total expected return attributable to A's expectancy of life ($66,336.00÷$134,580.00) | 49.3 |
| Percentage of total expected return attributable to B's expectancy of life ($68,244.00÷$134,580.00) | 50.7 |
| Portion of investment in the contract allocable to A's annuity (49.3 percent of $86,000) | $42,398.00 |
| Portion of investment in the contract allocable to B's annuity (50.7 percent of $86,000) | $43,602.00 |
| Value of the refund feature with respect to A's annuity (percentage from Table VII for age 70 and duration 10, or 11 percent, multiplied by lesser of the guaranteed amount and allocable portion of investment in the contract, $41,460) | $4,560.60 |
| A's allocable portion of the investment in the contract adjusted for refund feature ($42,398 less $4,560.60) | $37,837.40 |
| Value of the refund feature with respect to B's annuity (percentage from Table VII for age 60 and duration 20, or 11 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $43,602) | $4,796.22 |
| B's allocable portion of the investment in the contract adjusted for refund feature ($43,602 less $4,796.22) | $38,805.78 |
| Sum of A's and B's allocable portions of the investment in the contract after adjustment for the refund feature | $76,643.18 |
| Exclusion ratio for the contract as a whole (total adjusted investment in the contract, $76,643.18, divided by the total expected return from above, $134,580.00) (percent) | 56.9 |

(f) *Adjustment of investment in the contract with respect to contracts subject to §1.72–6(d).* In the case of a contract to which §1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this section is applied in the manner prescribed in §1.72–6(d) and, in particular, §1.72–6(d)(5)(vi).

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, as amended by T.D. 8115, 51 FR 45702, Dec. 19, 1986]

### §1.72–8 Effect of certain employer contributions with respect to premiums or other consideration paid or contributed by an employee.

(a) *Contributions in the nature of compensation*—(1) *Amounts includible in gross income of employee under subtitle A of the Code or prior income tax laws.* Section 72(f) provides that for the purposes of section 72 (c), (d), and (e), amounts contributed by an employer for the benefit of an employee or his beneficiaries shall constitute consideration paid or contributed by the employee to the extent that such amounts were includible in the gross income of the employee under subtitle A of the Code or prior income tax laws. Amounts to which this paragraph applies include, for example, contributions made by an employer to or under a trust or plan which fails to qualify under the provisions of section 401(a), provided that the employee's rights to such contributions are nonforfeitable at the time the contributions are made. See sections 402(b) and 403(c) and the regulations thereunder. This subparagraph also applies to premiums paid by an employer (other than premiums paid on behalf of an owner-employee) for life insurance protection for an employee if such premiums are includible in the gross income of the employee when paid. See §1.72–16. However, such premiums shall only be considered as premiums and other consideration paid by the employee with respect to any benefits attributable to the contract providing the life insurance protection. See §1.72–16.

(2) *Amounts not includible in gross income of employee at time contributed if paid directly to employee at that time.* Except as provided in subparagraph (3) of this paragraph, section 72(f) provides that for the purposes of section 72 (c), (d), and (e), amounts contributed by an

employer for the benefit of an employee or his beneficiaries shall constitute consideration paid or contributed by the employee to the extent that such amounts would not have been includible in the gross income of the employee at the time contributed had they been paid directly to the employee at that time. Amounts to which this subparagraph applies include, for example, contributions made by an employer after December 31, 1950, and before January 1, 1963, if made on account of foreign services rendered by an employee during a period in which the employee qualified as a bona fide resident of a foreign country under section 911(a) of the Internal Revenue Code of 1954, or under section 116(a) of the Internal Revenue Code of 1939. In such a case, it would be immaterial whether such contributions were made under a qualified plan or otherwise. See subparagraph (4) of this paragraph for rules governing the determination of the amount of employer foreign service contributions to which this subparagraph applies. On the other hand, if contributions are made by an employer to a qualified plan at a time when compensation paid directly to the employee concerned with respect to the same services rendered would have been includible in the gross income of the employee, such as in the case of an employee of a State government where contributions are made in 1955 with respect to services rendered by the employee prior to the year 1939, this subparagraph does not apply to such contributions.

(3) *Limitation*—(i) *In general.* Except as provided in subdivision (ii) of this subparagraph, the provisions of subparagraph (2) of this paragraph shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911, if such amounts had been paid directly to the employee at the time of contribution. Employer contributions attributable to foreign services performed by the employee after December 31, 1962, do not constitute, for purposes of section 72 (c), (d), and (e), consideration paid or contributed by the employee.

(ii) *Exception.* The provisions of subdivision (i) of this subparagraph shall not apply to amounts which were contributed by the employer to provide pension or annuity credits (determined in accordance with the provisions of subparagraph (4) of this paragraph) to the extent such credits are—

(*a*) Attributable to foreign services performed before January 1, 1963, with respect to which the employee qualified for the benefits of section 911(a) (or corresponding provisions of prior revenue laws), and

(*b*) Provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services.

Amounts described in this subdivision constitute, for purposes of section 72 (c), (d), and (e), consideration paid or contributed by the employee even though such amounts are contributed by the employer after December 31, 1962.

(4) *Determination of employer foreign service contributions which constitute consideration paid or contributed by employee.* For purposes of subparagraphs (2) and (3)(ii) of this paragraph, employer foreign service contributions which constitute, for purposes of section 72 (c), (d), and (e), consideration paid or contributed by the employee shall be determined as follows:

(i) *Treatment of identifiable contributions.* If, under the terms of the pension or annuity plan under which employer contributions were made, such contributions may be identified as—

(*a*) Attributable to foreign services performed before January 1, 1963, with respect to which the employee qualified for the benefits of section 911(a) (or corresponding provisions of prior revenue laws), and

(*b*) Made under pension or annuity plan provisions in existence on March 12, 1962, which were applicable to the services referred to in (*a*) of this subdivision on that date,

the amount of employer contributions so identified shall be considered paid or contributed by the employee.

(ii) *Alternative rule for unidentifiable contributions.* If employer contributions may not be identified in the manner described in subdivision (i) of this subparagraph, the amount of employer contributions attributable to foreign services performed before January 1, 1963, and considered paid or contributed by the employee shall be determined on the basis of an estimated allocation which is reasonable and consistent with the circumstances and the provisions of the pension or annuity plan under which such contributions are made. For example, if an employee's benefits under a pension or annuity plan, which is unchanged after March 12, 1962, are determined with respect to his basic compensation during his entire period of credited service, the amount of employer contributions considered paid or contributed by the employee shall be an amount which bears the same ratio to total employer contributions for such employee under the pension or annuity plan as his basic compensation attributable to foreign services performed before January 1, 1963, with respect to which he qualified for the benefits of section 911(a) (or corresponding provisions of prior revenue laws) bears to his total basic compensation. On the other hand, if an employee's benefits under a pension or annuity plan, which is unchanged after March 12, 1962, are determined with respect to his basic compensation during his final five years of credited service, the amount of employer contributions considered paid or contributed by the employee shall be an amount which bears the same ratio to total employer contributions for such employee as his number of years of credited service before January 1, 1963, with respect to which he qualified for the benefits of section 911(a) (or corresponding provisions of prior revenue laws) bears to his total number of years of credited service.

(5) *Amounts not includible in gross income of employee under subtitle A of the Code or prior income tax laws.* Amounts contributed by an employer which were not includible in the gross income of the employee under Subtitle A of the Code or prior income tax laws, but which would have been includible therein had they been paid directly to the employee, do not constitute consideration paid or contributed by the employee for the purposes of section 72. For example, contributions made by an employer under a qualified employees' trust or plan, which contributions would have been includible in the gross income of the employee had such contributions been paid to him directly as compensation, do not constitute consideration paid or contributed by the employee. Accordingly, the aggregate amount of premiums or other consideration paid or contributed by an employee, insofar as compensatory employer contributions are concerned, consists solely of the (i) sum of all amounts actually contributed by the employee, plus (ii) contributions in the nature of compensation which are deemed to be paid or contributed by the employee under this paragraph.

(b) *Contributions in the nature of death benefits.* In the case of an employee's beneficiary, the aggregate amount of premiums or other consideration paid or deemed to be paid or contributed by the employee shall also include:

(1) Amounts (other than amounts paid as an annuity) to the extent such amounts are excludable from the beneficiary's gross income as a death benefit under section 101(b), and

(2) Any amount or amounts of death benefits which are treated as additional consideration contributed by the employee under section 101(b)(2)(D) and the regulations thereunder, or which were excludable from the beneficiary's gross income as a death benefit under section 22(b)(1)(B) of the Internal Revenue Code of 1939 and the regulations thereunder.

Accordingly, in the case of an employee's beneficiary, any such amount shall be added to any amount or amounts deemed paid or contributed by the employee under paragraph (a)(1) of this section and to any amounts actually contributed by the employee for the purpose of finding the aggregate amount of premiums or other consideration paid or contributed by the employee.

(c) *Amounts ''made available'' to an employee or his beneficiary.* Any amount which, although not actually paid, is made available to and includable in the gross income of an employee or his beneficiary under the rules of sections 402 and 403 and the regulations thereunder, shall be considered an amount contributed by the employee and shall be aggregated with amounts, if any, to which paragraphs (a) and (b) of this section apply for the purpose of determining the aggregate amount of premiums or other consideration paid by the employee.

(d) *Amounts includable in gross income of employee when his rights under annuity contract change to nonforfeitable rights.* Any amount which, by reason of section 403(d) and after the application of paragraph (b) of § 1.403 (b)–1, is required to be included in an employee's gross income for the year when his rights under an annuity contract change from forfeitable to nonforfeitable rights shall be considered an amount contributed by the employee and shall be aggregated with amounts, if any, to which paragraphs (a), (b), and (c) of this section apply for the purpose of determining the aggregate amount of premiums or other consideration paid or contributed by the employee for such annuity contract. In other words, if, under section 403(d), an employee of an organization exempt from tax under section 501(a) or 521(a) is required to include an amount in gross income by reason of his rights under an annuity contract changing from forfeitable to nonforfeitable rights, such amount, to the extent it is not excludable from gross income under paragraph (b) of § 1.403 (b)–1, shall be considered an amount contributed by such employee for the annuity contract.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6665, 28 FR 7245, July 16, 1963; T.D. 6783, 29 FR 18356, Dec. 24, 1964]

### § 1.72–9 Tables.

The following tables are to be used in connection with computations under section 72 and the regulations thereunder. Tables I, II, IIA, III, and IV are to be used if the investment in the contract does not include a post-June 1986 investment in the contract (as defined in § 1.72–6(d)(3)). Tables V, VI, VIA, VII, and VIII are to be used if the investment in the contract includes a post-June 1986 investment in the contract (as defined in § 1.72–6(d)(3)).

In the case of a contract under which amounts are received as an annuity after June 30, 1986, a taxpayer receiving such amounts may elect to treat the entire investment in the contract as post-June 1986 investment in the contract and thus apply Tables V through VIII. A taxpayer may make the election for any taxable year in which such amounts are received by attaching to the taxpayer's return for such taxable year a statement that the taxpayer is electing under § 1.72–9 to treat the entire investment in the contract as post-June 1986 investment in the contract. The statement must contain the taxpayer's name, address, and taxpayer identification number. The election is irrevocable and applies with respect to all amounts that the taxpayer receives as an annuity under the contract in the taxable year for which the election is made or in any subsequent taxable year. (Note that for purposes of the examples in §§ 1.72–4 through 1.72–11 the election described in this section is disregarded (*i.e.*, it assumed that the taxpayer does not make an election under this section).) See also § 1.72–6(d)(3) for rules treating the entire investment in a contract as post-June 1986 investment in a contract if the annuity starting date of the contract is after June 30, 1986, and the contract provides for a disqualifying form of payment or settlement, such as an option to receive a lump sum in full discharge of the obligation under the contract. In addition, see § 1.72–6(d) for special rules concerning the tables to be used and the separate computations required if the investment in the contract includes both a pre-July 1986 investment in the contract and a post-June 1986 investment in the contract and the election described in § 1.72–6(d)(6) is made with respect to the contract.

TABLE I—ORDINARY LIFE ANNUITIES—ONE LIFE—EXPECTED RETURN MULTIPLES

| Ages | | Multiples |
|---|---|---|
| Male | Female | |
| 6 | 11 | 65.0 |
| 7 | 12 | 64.1 |
| 8 | 13 | 63.2 |
| 9 | 14 | 62.3 |
| 10 | 15 | 61.4 |
| 11 | 16 | 60.4 |
| 12 | 17 | 59.5 |
| 13 | 18 | 58.6 |
| 14 | 19 | 57.7 |
| 15 | 20 | 56.7 |
| 16 | 21 | 55.8 |
| 17 | 22 | 54.9 |
| 18 | 23 | 53.9 |

TABLE I—ORDINARY LIFE ANNUITIES—ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

| Ages: Male | Ages: Female | Multiples |
|---|---|---|
| 19 | 24 | 53.0 |
| 20 | 25 | 52.1 |
| 21 | 26 | 51.1 |
| 22 | 27 | 50.2 |
| 23 | 28 | 49.3 |
| 24 | 29 | 48.3 |
| 25 | 30 | 47.4 |
| 26 | 31 | 46.5 |
| 27 | 32 | 45.6 |
| 28 | 33 | 44.6 |
| 29 | 34 | 43.7 |
| 30 | 35 | 42.8 |
| 31 | 36 | 41.9 |
| 32 | 37 | 41.0 |
| 33 | 38 | 40.0 |
| 34 | 39 | 39.1 |
| 35 | 40 | 38.2 |
| 36 | 41 | 37.3 |
| 37 | 42 | 36.5 |
| 38 | 43 | 35.6 |
| 39 | 44 | 34.7 |
| 40 | 45 | 33.8 |
| 41 | 46 | 33.0 |
| 42 | 47 | 32.1 |
| 43 | 48 | 31.2 |
| 44 | 49 | 30.4 |
| 45 | 50 | 29.6 |
| 46 | 51 | 28.7 |
| 47 | 52 | 27.9 |
| 48 | 53 | 27.1 |
| 49 | 54 | 26.3 |
| 50 | 55 | 25.5 |
| 51 | 56 | 24.7 |
| 52 | 57 | 24.0 |
| 53 | 58 | 23.2 |
| 54 | 59 | 22.4 |
| 55 | 60 | 21.7 |
| 56 | 61 | 21.0 |
| 57 | 62 | 20.3 |
| 58 | 63 | 19.6 |
| 59 | 64 | 18.9 |
| 60 | 65 | 18.2 |
| 61 | 66 | 17.5 |
| 62 | 67 | 16.9 |
| 63 | 68 | 16.2 |
| 64 | 69 | 15.6 |
| 65 | 70 | 15.0 |

TABLE I—ORDINARY LIFE ANNUITIES—ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

| Ages: Male | Ages: Female | Multiples |
|---|---|---|
| 66 | 71 | 14.4 |
| 67 | 72 | 13.8 |
| 68 | 73 | 13.2 |
| 69 | 74 | 12.6 |
| 70 | 75 | 12.1 |
| 71 | 76 | 11.6 |
| 72 | 77 | 11.0 |
| 73 | 78 | 10.5 |
| 74 | 79 | 10.1 |
| 75 | 80 | 9.6 |
| 76 | 81 | 9.1 |
| 77 | 82 | 8.7 |
| 78 | 83 | 8.3 |
| 79 | 84 | 7.8 |
| 80 | 85 | 7.5 |
| 81 | 86 | 7.1 |
| 82 | 87 | 6.7 |
| 83 | 88 | 6.3 |
| 84 | 89 | 6.0 |
| 85 | 90 | 5.7 |
| 86 | 91 | 5.4 |
| 87 | 92 | 5.1 |
| 88 | 93 | 4.8 |
| 89 | 94 | 4.5 |
| 90 | 95 | 4.2 |
| 91 | 96 | 4.0 |
| 92 | 97 | 3.7 |
| 93 | 98 | 3.5 |
| 94 | 99 | 3.3 |
| 95 | 100 | 3.1 |
| 96 | 101 | 2.9 |
| 97 | 102 | 2.7 |
| 98 | 103 | 2.5 |
| 99 | 104 | 2.3 |
| 100 | 105 | 2.1 |
| 101 | 106 | 1.9 |
| 102 | 107 | 1.7 |
| 103 | 108 | 1.5 |
| 104 | 109 | 1.3 |
| 105 | 110 | 1.2 |
| 106 | 111 | 1.0 |
| 107 | 112 | .8 |
| 108 | 113 | .7 |
| 109 | 114 | .6 |
| 110 | 115 | .5 |
| 111 | 116 | 0 |

TABLE II—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES—TWO LIVES—EXPECTED RETURN MULTIPLES

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| | | Female 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 6 | 11 | 73.5 | 73.0 | 72.6 | 72.2 | 71.8 | 71.4 | 71.0 | 70.7 | 70.4 | 70.0 | 69.7 | 69.5 | 69.2 | 68.9 | 68.7 |
| 7 | 12 | 73.0 | 72.6 | 72.1 | 71.7 | 71.3 | 70.9 | 70.5 | 70.1 | 69.8 | 69.4 | 69.1 | 68.8 | 68.5 | 68.3 | 68.0 |
| 8 | 13 | 72.6 | 72.1 | 71.6 | 71.2 | 70.8 | 70.4 | 70.0 | 69.6 | 69.2 | 68.9 | 68.5 | 68.2 | 67.9 | 67.6 | 67.3 |
| 9 | 14 | 72.2 | 71.7 | 71.2 | 70.7 | 70.3 | 69.9 | 69.4 | 69.0 | 68.7 | 68.3 | 67.9 | 67.6 | 67.3 | 67.0 | 66.7 |
| 10 | 15 | 71.8 | 71.3 | 70.8 | 70.3 | 69.8 | 69.4 | 68.9 | 68.5 | 68.1 | 67.7 | 67.4 | 67.0 | 66.7 | 66.4 | 66.1 |
| 11 | 16 | 71.4 | 70.9 | 70.4 | 69.9 | 69.4 | 68.9 | 68.5 | 68.0 | 67.6 | 67.2 | 66.8 | 66.5 | 66.1 | 65.8 | 65.4 |
| 12 | 17 | 71.0 | 70.5 | 70.0 | 69.4 | 68.9 | 68.5 | 68.0 | 67.5 | 67.1 | 66.7 | 66.3 | 65.9 | 65.5 | 65.2 | 64.8 |
| 13 | 18 | 70.7 | 70.1 | 69.6 | 69.0 | 68.5 | 68.0 | 67.5 | 67.1 | 66.6 | 66.2 | 65.8 | 65.4 | 65.0 | 64.6 | 64.2 |
| 14 | 19 | 70.4 | 69.8 | 69.2 | 68.7 | 68.1 | 67.6 | 67.1 | 66.6 | 66.1 | 65.7 | 65.3 | 64.8 | 64.4 | 64.0 | 63.7 |
| 15 | 20 | 70.0 | 69.4 | 68.9 | 68.3 | 67.7 | 67.2 | 66.7 | 66.2 | 65.7 | 65.2 | 64.8 | 64.3 | 63.9 | 63.5 | 63.1 |
| 16 | 21 | 69.7 | 69.1 | 68.5 | 67.9 | 67.4 | 66.8 | 66.3 | 65.8 | 65.3 | 64.8 | 64.3 | 63.8 | 63.4 | 63.0 | 62.6 |
| 17 | 22 | 69.5 | 68.8 | 68.2 | 67.6 | 67.0 | 66.5 | 65.9 | 65.4 | 64.8 | 64.3 | 63.8 | 63.4 | 62.9 | 62.5 | 62.0 |
| 18 | 23 | 69.2 | 68.5 | 67.9 | 67.3 | 66.7 | 66.1 | 65.5 | 65.0 | 64.4 | 63.9 | 63.4 | 62.9 | 62.4 | 62.0 | 61.5 |
| 19 | 24 | 68.9 | 68.3 | 67.6 | 67.0 | 66.4 | 65.8 | 65.2 | 64.6 | 64.0 | 63.5 | 63.0 | 62.5 | 62.0 | 61.5 | 61.0 |
| 20 | 25 | 68.7 | 68.0 | 67.3 | 66.7 | 66.1 | 65.4 | 64.8 | 64.2 | 63.7 | 63.1 | 62.6 | 62.0 | 61.5 | 61.0 | 60.6 |

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 |
| | | Female 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 |
| 6 | 11 | 68.4 | 68.2 | 68.0 | 67.8 | 67.6 | 67.5 | 67.3 | 67.1 | 67.0 | 66.8 | 66.7 | 66.6 | 66.5 | 66.4 |
| 7 | 12 | 67.8 | 67.5 | 67.3 | 67.1 | 66.9 | 66.7 | 66.5 | 66.4 | 66.2 | 66.1 | 65.9 | 65.8 | 65.7 | 65.6 |
| 8 | 13 | 67.1 | 66.8 | 66.6 | 66.4 | 66.2 | 66.0 | 65.8 | 65.6 | 65.4 | 65.3 | 65.1 | 65.0 | 64.9 | 64.7 |
| 9 | 14 | 66.4 | 66.2 | 65.9 | 65.7 | 65.4 | 65.2 | 65.0 | 64.8 | 64.7 | 64.5 | 64.3 | 64.2 | 64.1 | 63.9 |
| 10 | 15 | 65.8 | 65.5 | 65.2 | 65.0 | 64.7 | 64.5 | 64.3 | 64.1 | 63.9 | 63.7 | 63.6 | 63.4 | 63.3 | 63.1 |
| 11 | 16 | 65.1 | 64.8 | 64.6 | 64.3 | 64.1 | 63.8 | 63.6 | 63.4 | 63.2 | 63.0 | 62.8 | 62.6 | 62.5 | 62.3 |
| 12 | 17 | 64.5 | 64.2 | 63.9 | 63.6 | 63.4 | 63.1 | 62.9 | 62.7 | 62.4 | 62.2 | 62.0 | 61.9 | 61.7 | 61.5 |
| 13 | 18 | 63.9 | 63.6 | 63.3 | 63.0 | 62.7 | 62.4 | 62.2 | 61.9 | 61.7 | 61.5 | 61.3 | 61.1 | 60.9 | 60.8 |
| 14 | 19 | 63.3 | 63.0 | 62.7 | 62.3 | 62.0 | 61.8 | 61.5 | 61.2 | 61.0 | 60.8 | 60.6 | 60.4 | 60.2 | 60.0 |
| 15 | 20 | 62.7 | 62.4 | 62.0 | 61.7 | 61.4 | 61.1 | 60.8 | 60.6 | 60.3 | 60.1 | 59.8 | 59.6 | 59.4 | 59.2 |
| 16 | 21 | 62.2 | 61.8 | 61.4 | 61.1 | 60.8 | 60.5 | 60.2 | 59.9 | 59.6 | 59.4 | 59.1 | 58.9 | 58.7 | 58.5 |
| 17 | 22 | 61.6 | 61.2 | 60.9 | 60.5 | 60.2 | 59.8 | 59.5 | 59.2 | 58.9 | 58.7 | 58.4 | 58.2 | 57.9 | 57.7 |
| 18 | 23 | 61.1 | 60.7 | 60.3 | 59.9 | 59.6 | 59.2 | 58.9 | 58.6 | 58.3 | 58.0 | 57.7 | 57.5 | 57.2 | 57.0 |
| 19 | 24 | 60.6 | 60.2 | 59.7 | 59.4 | 59.0 | 58.6 | 58.3 | 57.9 | 57.6 | 57.3 | 57.0 | 56.8 | 56.5 | 56.3 |
| 20 | 25 | 60.1 | 59.6 | 59.2 | 58.8 | 58.4 | 58.0 | 57.7 | 57.3 | 57.0 | 56.7 | 56.4 | 56.1 | 55.8 | 55.6 |
| 21 | 26 | 59.6 | 59.1 | 58.7 | 58.3 | 57.9 | 57.5 | 57.1 | 56.7 | 56.4 | 56.0 | 55.7 | 55.4 | 55.1 | 54.9 |

| Male | Female | Ages | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 |
| | | Female 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 |
| 22 | 27 | 59.1 | 58.7 | 58.2 | 57.7 | 57.3 | 56.9 | 56.5 | 56.1 | 55.8 | 55.4 | 55.1 | 54.8 | 54.5 | 54.2 |
| 23 | 28 | 58.7 | 58.2 | 57.7 | 57.2 | 56.8 | 56.4 | 55.9 | 55.5 | 55.2 | 54.8 | 54.4 | 54.1 | 53.8 | 53.5 |
| 24 | 29 | 58.3 | 57.7 | 57.2 | 56.8 | 56.3 | 55.8 | 55.4 | 55.0 | 54.6 | 54.2 | 53.8 | 53.5 | 53.2 | 52.8 |
| 25 | 30 | 57.9 | 57.3 | 56.8 | 56.3 | 55.8 | 55.3 | 54.9 | 54.4 | 54.0 | 53.6 | 53.2 | 52.9 | 52.5 | 52.2 |
| 26 | 31 | 57.5 | 56.9 | 56.4 | 55.8 | 55.3 | 54.8 | 54.4 | 53.9 | 53.5 | 53.1 | 52.7 | 52.3 | 51.9 | 51.6 |
| 27 | 32 | 57.1 | 56.5 | 55.9 | 55.4 | 54.9 | 54.4 | 53.9 | 53.4 | 53.0 | 52.5 | 52.1 | 51.7 | 51.3 | 50.9 |
| 28 | 33 | 56.7 | 56.1 | 55.5 | 55.0 | 54.4 | 53.9 | 53.4 | 52.9 | 52.4 | 52.0 | 51.6 | 51.1 | 50.7 | 50.3 |
| 29 | 34 | 56.4 | 55.8 | 55.2 | 54.6 | 54.0 | 53.5 | 53.0 | 52.4 | 52.0 | 51.5 | 51.0 | 50.6 | 50.2 | 49.3 |
| 30 | 35 | 56.0 | 55.4 | 54.8 | 54.2 | 53.6 | 53.1 | 52.5 | 52.0 | 51.5 | 51.0 | 50.5 | 50.1 | 49.6 | 49.2 |
| 31 | 36 | 55.7 | 55.1 | 54.4 | 53.8 | 53.2 | 52.7 | 52.1 | 51.6 | 51.0 | 50.5 | 50.0 | 49.5 | 49.1 | 48.7 |
| 32 | 37 | 55.4 | 54.8 | 54.1 | 53.5 | 52.9 | 52.3 | 51.7 | 51.1 | 50.6 | 50.1 | 49.5 | 49.1 | 48.6 | 48.1 |
| 33 | 38 | 55.1 | 54.5 | 53.8 | 53.2 | 52.5 | 51.9 | 51.3 | 50.7 | 50.2 | 49.6 | 49.1 | 48.6 | 48.1 | 47.6 |
| 34 | 39 | 54.9 | 54.2 | 53.5 | 52.8 | 52.2 | 51.6 | 50.9 | 50.3 | 49.8 | 49.2 | 48.7 | 48.1 | 47.6 | 47.1 |

| Male | Female | Ages | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 |
| | | Female 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 |
| 6 | 11 | 66.3 | 66.2 | 66.1 | 66.0 | 65.9 | 65.9 | 65.8 | 65.7 | 65.7 | 65.6 | 65.6 | 65.5 | 65.5 | 65.5 | 65.4 |
| 7 | 12 | 65.4 | 65.3 | 65.3 | 65.2 | 65.1 | 65.0 | 64.9 | 64.9 | 64.8 | 64.8 | 64.7 | 64.7 | 64.6 | 64.6 | 64.5 |
| 8 | 13 | 64.6 | 64.5 | 64.4 | 64.3 | 64.2 | 64.2 | 64.1 | 64.0 | 64.0 | 63.9 | 63.8 | 63.8 | 63.7 | 63.7 | 63.7 |
| 9 | 14 | 63.8 | 63.7 | 63.6 | 63.5 | 63.4 | 63.3 | 63.2 | 63.2 | 63.1 | 63.0 | 63.0 | 62.9 | 62.9 | 62.8 | 62.8 |
| 10 | 15 | 63.0 | 62.9 | 62.8 | 62.7 | 62.6 | 62.5 | 62.4 | 62.3 | 62.2 | 62.2 | 62.1 | 62.0 | 62.0 | 61.9 | 61.9 |
| 11 | 16 | 62.2 | 62.1 | 61.9 | 61.8 | 61.7 | 61.6 | 61.5 | 61.4 | 61.4 | 61.3 | 61.2 | 61.2 | 61.1 | 61.0 | 61.0 |
| 12 | 17 | 61.4 | 61.3 | 61.1 | 61.0 | 60.9 | 60.8 | 60.7 | 60.6 | 60.5 | 60.4 | 60.4 | 60.3 | 60.2 | 60.2 | 60.1 |
| 13 | 18 | 60.6 | 60.5 | 60.3 | 60.2 | 60.1 | 60.0 | 59.9 | 59.8 | 59.7 | 59.6 | 59.5 | 59.4 | 59.4 | 59.3 | 59.2 |
| 14 | 19 | 59.8 | 59.7 | 59.5 | 59.4 | 59.3 | 59.1 | 59.0 | 58.9 | 58.8 | 58.7 | 58.6 | 58.6 | 58.5 | 58.4 | 58.4 |
| 15 | 20 | 59.0 | 58.9 | 58.7 | 58.6 | 58.4 | 58.3 | 58.2 | 58.1 | 58.0 | 57.9 | 57.8 | 57.7 | 57.6 | 57.6 | 57.5 |
| 16 | 21 | 58.3 | 58.1 | 57.9 | 57.8 | 57.6 | 57.5 | 57.4 | 57.2 | 57.1 | 57.0 | 56.9 | 56.8 | 56.8 | 56.7 | 56.6 |
| 17 | 22 | 57.5 | 57.3 | 57.2 | 57.0 | 56.8 | 56.7 | 56.6 | 56.4 | 56.3 | 56.2 | 56.1 | 56.0 | 55.9 | 55.8 | 55.7 |
| 18 | 23 | 56.8 | 56.6 | 56.4 | 56.2 | 56.0 | 55.9 | 55.7 | 55.6 | 55.5 | 55.4 | 55.2 | 55.1 | 55.1 | 55.0 | 54.9 |
| 19 | 24 | 56.0 | 55.8 | 55.6 | 55.4 | 55.3 | 55.1 | 54.9 | 54.8 | 54.7 | 54.5 | 54.4 | 54.3 | 54.2 | 54.1 | 54.0 |
| 20 | 25 | 55.3 | 55.1 | 54.9 | 54.7 | 54.5 | 54.3 | 54.1 | 54.0 | 53.8 | 53.7 | 53.6 | 53.5 | 53.4 | 53.3 | 53.2 |
| 21 | 26 | 54.6 | 54.4 | 54.1 | 53.9 | 53.7 | 53.5 | 53.4 | 53.2 | 53.0 | 52.9 | 52.8 | 52.6 | 52.5 | 52.4 | 52.3 |
| 22 | 27 | 53.9 | 53.6 | 53.4 | 53.2 | 53.0 | 52.8 | 52.6 | 52.4 | 52.2 | 52.1 | 51.9 | 51.8 | 51.7 | 51.6 | 51.5 |
| 23 | 28 | 53.2 | 52.9 | 52.7 | 52.5 | 52.2 | 52.0 | 51.8 | 51.6 | 51.5 | 51.3 | 51.1 | 51.0 | 50.9 | 50.7 | 50.6 |
| 24 | 29 | 52.5 | 52.3 | 52.0 | 51.7 | 51.5 | 51.3 | 51.1 | 50.9 | 50.7 | 50.5 | 50.3 | 50.2 | 50.0 | 49.9 | 49.8 |
| 25 | 30 | 51.9 | 51.6 | 51.3 | 51.0 | 50.8 | 50.5 | 50.3 | 50.1 | 49.9 | 49.7 | 49.6 | 49.4 | 49.2 | 49.1 | 49.0 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 26 | 31 | 51.2 | 50.9 | 50.6 | 50.3 | 50.1 | 49.8 | 49.6 | 49.4 | 49.2 | 49.0 | 48.8 | 48.6 | 48.4 | 48.3 | 48.1 |
| 27 | 32 | 50.6 | 50.3 | 50.0 | 49.7 | 49.4 | 49.1 | 48.9 | 48.6 | 48.4 | 48.2 | 48.0 | 47.8 | 47.6 | 47.5 | 47.3 |
| 28 | 33 | 50.0 | 49.6 | 49.3 | 49.0 | 48.7 | 48.4 | 48.2 | 47.9 | 47.7 | 47.5 | 47.2 | 47.1 | 46.9 | 46.7 | 46.5 |
| 29 | 34 | 49.4 | 49.0 | 48.7 | 48.3 | 48.0 | 47.7 | 47.5 | 47.2 | 47.0 | 46.7 | 46.5 | 46.3 | 46.1 | 45.9 | 45.7 |
| 30 | 35 | 48.8 | 48.4 | 48.1 | 47.7 | 47.4 | 47.1 | 46.8 | 46.5 | 46.2 | 46.0 | 45.8 | 45.5 | 45.3 | 45.2 | 45.0 |
| 31 | 36 | 48.2 | 47.8 | 47.5 | 47.1 | 46.8 | 46.4 | 46.1 | 45.8 | 45.6 | 45.3 | 45.0 | 44.8 | 44.6 | 44.4 | 44.2 |
| 32 | 37 | 47.7 | 47.3 | 46.9 | 46.5 | 46.1 | 45.8 | 45.5 | 45.2 | 44.9 | 44.6 | 44.3 | 44.1 | 43.9 | 43.7 | 43.4 |
| 33 | 38 | 47.2 | 46.7 | 46.3 | 45.9 | 45.5 | 45.2 | 44.8 | 44.5 | 44.2 | 43.9 | 43.7 | 43.4 | 43.2 | 42.9 | 42.7 |
| 34 | 39 | 46.7 | 46.2 | 45.8 | 45.4 | 45.0 | 44.6 | 44.2 | 43.9 | 43.6 | 43.3 | 43.0 | 42.7 | 42.5 | 42.2 | 42.0 |

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 |
| | | Female 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 |
| 6 | 11 | 65.4 | 65.4 | 65.3 | 65.3 | 65.3 | 65.3 | 65.3 | 65.2 | 65.2 | 65.2 | 65.2 | 65.2 | 65.2 | 65.2 |
| 7 | 12 | 64.5 | 64.5 | 64.4 | 64.4 | 64.4 | 64.4 | 64.3 | 64.3 | 64.3 | 64.3 | 64.3 | 64.3 | 64.3 | 64.2 |
| 8 | 13 | 63.6 | 63.6 | 63.5 | 63.5 | 63.5 | 63.5 | 63.4 | 63.4 | 63.4 | 63.4 | 63.4 | 63.4 | 63.3 | 63.3 |
| 9 | 14 | 62.7 | 62.7 | 62.7 | 62.6 | 62.6 | 62.6 | 62.5 | 62.5 | 62.5 | 62.5 | 62.5 | 62.4 | 62.4 | 62.4 |
| 10 | 15 | 61.8 | 61.8 | 61.8 | 61.7 | 61.7 | 61.7 | 61.6 | 61.6 | 61.6 | 61.6 | 61.6 | 61.5 | 61.5 | 61.5 |
| 11 | 16 | 61.0 | 60.9 | 60.9 | 60.8 | 60.8 | 60.8 | 60.7 | 60.7 | 60.7 | 60.7 | 60.6 | 60.6 | 60.6 | 60.6 |
| 12 | 17 | 60.1 | 60.0 | 60.0 | 59.9 | 59.9 | 59.9 | 59.8 | 59.8 | 59.8 | 59.8 | 59.7 | 59.7 | 59.7 | 59.7 |
| 13 | 18 | 59.2 | 59.1 | 59.1 | 59.0 | 59.0 | 59.0 | 58.9 | 58.9 | 58.9 | 58.9 | 58.8 | 58.8 | 58.8 | 58.8 |
| 14 | 19 | 58.3 | 58.2 | 58.2 | 58.2 | 58.1 | 58.1 | 58.0 | 58.0 | 58.0 | 57.9 | 57.9 | 57.9 | 57.9 | 57.9 |
| 15 | 20 | 57.4 | 57.4 | 57.3 | 57.3 | 57.2 | 57.2 | 57.1 | 57.1 | 57.1 | 57.0 | 57.0 | 57.0 | 57.0 | 56.9 |
| 16 | 21 | 56.5 | 56.5 | 56.4 | 56.4 | 56.3 | 56.3 | 56.2 | 56.2 | 56.2 | 56.1 | 56.1 | 56.1 | 56.1 | 56.0 |
| 17 | 22 | 55.7 | 55.6 | 55.5 | 55.5 | 55.4 | 55.4 | 55.3 | 55.3 | 55.3 | 55.2 | 55.2 | 55.2 | 55.1 | 55.1 |
| 18 | 23 | 54.8 | 54.7 | 54.7 | 54.6 | 54.6 | 54.5 | 54.5 | 54.4 | 54.4 | 54.3 | 54.3 | 54.3 | 54.2 | 54.2 |
| 19 | 24 | 53.9 | 53.9 | 53.8 | 53.7 | 53.7 | 53.6 | 53.6 | 53.5 | 53.5 | 53.4 | 53.4 | 53.4 | 53.3 | 53.3 |
| 20 | 25 | 53.1 | 53.0 | 52.9 | 52.8 | 52.8 | 52.7 | 52.7 | 52.6 | 52.6 | 52.5 | 52.5 | 52.4 | 52.4 | 52.4 |
| 21 | 26 | 52.2 | 52.1 | 52.0 | 52.0 | 51.9 | 51.8 | 51.8 | 51.7 | 51.7 | 51.6 | 51.6 | 51.5 | 51.5 | 51.5 |
| 22 | 27 | 51.4 | 51.3 | 51.2 | 51.1 | 51.0 | 51.0 | 50.9 | 50.8 | 50.8 | 50.7 | 50.7 | 50.6 | 50.6 | 50.6 |
| 23 | 28 | 50.5 | 50.4 | 50.3 | 50.2 | 50.2 | 50.1 | 50.0 | 50.0 | 49.9 | 49.8 | 49.8 | 49.7 | 49.7 | 49.7 |
| 24 | 29 | 49.7 | 49.6 | 49.5 | 49.4 | 49.3 | 49.2 | 49.1 | 49.1 | 49.0 | 49.0 | 48.9 | 48.9 | 48.8 | 48.8 |
| 25 | 30 | 48.8 | 48.7 | 48.6 | 48.5 | 48.4 | 48.3 | 48.3 | 48.2 | 48.1 | 48.1 | 48.0 | 48.0 | 47.9 | 47.9 |
| 26 | 31 | 48.0 | 47.9 | 47.8 | 47.7 | 47.6 | 47.5 | 47.4 | 47.3 | 47.3 | 47.2 | 47.1 | 47.1 | 47.0 | 47.0 |
| 27 | 32 | 47.2 | 47.1 | 46.9 | 46.8 | 46.7 | 46.6 | 46.5 | 46.5 | 46.4 | 46.3 | 46.2 | 46.2 | 46.1 | 46.1 |
| 28 | 33 | 46.4 | 46.3 | 46.1 | 46.0 | 45.9 | 45.8 | 45.7 | 45.6 | 45.5 | 45.4 | 45.4 | 45.3 | 45.2 | 45.2 |
| 29 | 34 | 45.6 | 45.4 | 45.3 | 45.2 | 45.1 | 44.9 | 44.8 | 44.7 | 44.7 | 44.6 | 44.5 | 44.4 | 44.4 | 44.3 |
| 30 | 35 | 44.8 | 44.6 | 44.5 | 44.4 | 44.2 | 44.1 | 44.0 | 43.9 | 43.8 | 43.7 | 43.6 | 43.6 | 43.5 | 43.4 |
| 31 | 36 | 44.0 | 43.9 | 43.7 | 43.6 | 43.4 | 43.3 | 43.2 | 43.1 | 43.0 | 42.9 | 42.8 | 42.7 | 42.6 | 42.0 |
| 32 | 37 | 43.3 | 43.1 | 42.9 | 42.8 | 42.6 | 42.5 | 42.4 | 42.2 | 42.1 | 42.0 | 41.9 | 41.9 | 41.8 | 41.7 |

| Male | Female | Ages: Male 50 / Female 55 | 51 / 56 | 52 / 57 | 53 / 58 | 54 / 59 | 55 / 60 | 56 / 61 | 57 / 62 | 58 / 63 | 59 / 64 | 60 / 65 | 61 / 66 | 62 / 67 | 63 / 68 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 33 | 38 | 42.5 | 42.3 | 42.1 | 42.0 | 41.8 | 41.7 | 41.5 | 41.4 | 41.3 | 41.2 | 41.1 | 41.0 | 40.9 | 40.8 |
| 34 | 39 | 41.8 | 41.6 | 41.4 | 41.2 | 41.0 | 40.9 | 40.7 | 40.6 | 40.5 | 40.4 | 40.3 | 40.2 | 40.1 | 40.0 |

| Male | Female | Ages: Male 64 / Female 69 | 65 / 70 | 66 / 71 | 67 / 72 | 68 / 73 | 69 / 74 | 70 / 75 | 71 / 76 | 72 / 77 | 73 / 78 | 74 / 79 | 75 / 80 | 76 / 81 | 77 / 82 | 78 / 83 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 6 | 11 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 |
| 7 | 12 | 64.2 | 64.2 | 64.2 | 64.2 | 64.2 | 64.2 | 64.2 | 64.2 | 64.2 | 64.2 | 64.2 | 64.2 | 64.2 | 64.1 | 64.1 |
| 8 | 13 | 63.3 | 63.3 | 63.3 | 63.3 | 63.3 | 63.3 | 63.3 | 63.3 | 63.3 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 |
| 9 | 14 | 62.4 | 62.4 | 62.4 | 62.4 | 62.4 | 62.4 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 |
| 10 | 15 | 61.5 | 61.5 | 61.5 | 61.5 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 |
| 11 | 16 | 60.6 | 60.6 | 60.6 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 |
| 12 | 17 | 59.7 | 59.6 | 59.6 | 59.6 | 59.6 | 59.6 | 59.6 | 59.6 | 59.6 | 59.6 | 59.6 | 59.6 | 59.6 | 59.5 | 59.5 |
| 13 | 18 | 58.8 | 58.7 | 58.7 | 58.7 | 58.7 | 58.7 | 58.7 | 58.7 | 58.7 | 58.7 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 |
| 14 | 19 | 57.8 | 57.8 | 57.8 | 57.8 | 57.8 | 57.8 | 57.8 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 |
| 15 | 20 | 56.9 | 56.9 | 56.9 | 56.9 | 56.9 | 56.8 | 56.8 | 56.8 | 56.8 | 56.8 | 56.8 | 56.8 | 56.8 | 56.8 | 56.8 |
| 16 | 21 | 56.0 | 56.0 | 56.0 | 56.0 | 55.9 | 55.9 | 55.9 | 55.9 | 55.9 | 55.9 | 55.9 | 55.9 | 55.9 | 55.9 | 55.8 |
| 17 | 22 | 55.1 | 55.1 | 55.1 | 55.0 | 55.0 | 55.0 | 55.0 | 55.0 | 55.0 | 55.0 | 55.0 | 54.9 | 54.9 | 54.9 | 54.9 |
| 18 | 23 | 54.2 | 54.2 | 54.1 | 54.1 | 54.1 | 54.1 | 54.1 | 54.1 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 |
| 19 | 24 | 53.3 | 53.2 | 53.2 | 53.2 | 53.2 | 53.2 | 53.2 | 53.1 | 53.1 | 53.1 | 53.1 | 53.1 | 53.1 | 53.1 | 53.1 |
| 20 | 25 | 52.4 | 52.3 | 52.3 | 52.3 | 52.3 | 52.2 | 52.2 | 52.2 | 52.2 | 52.2 | 52.2 | 52.2 | 52.2 | 52.1 | 52.1 |
| 21 | 26 | 51.4 | 51.4 | 51.4 | 51.4 | 51.3 | 51.3 | 51.3 | 51.3 | 51.3 | 51.3 | 51.3 | 51.2 | 51.2 | 51.2 | 51.2 |
| 22 | 27 | 50.5 | 50.5 | 50.5 | 50.5 | 50.4 | 50.4 | 50.4 | 50.4 | 50.4 | 50.3 | 50.3 | 50.3 | 50.3 | 50.3 | 50.3 |
| 23 | 28 | 49.6 | 49.6 | 49.6 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.4 | 49.4 | 49.4 | 49.4 | 49.4 | 49.4 | 49.4 |
| 24 | 29 | 48.7 | 48.7 | 48.7 | 48.6 | 48.6 | 48.6 | 48.6 | 48.5 | 48.5 | 48.5 | 48.5 | 48.5 | 48.5 | 48.4 | 48.4 |
| 25 | 30 | 47.8 | 47.8 | 47.8 | 47.7 | 47.7 | 47.7 | 47.6 | 47.6 | 47.6 | 47.6 | 47.6 | 47.5 | 47.5 | 47.5 | 47.5 |
| 26 | 31 | 46.9 | 46.9 | 46.8 | 46.8 | 46.8 | 46.8 | 46.7 | 46.7 | 46.7 | 46.7 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 |
| 27 | 32 | 46.0 | 46.0 | 45.9 | 45.9 | 45.9 | 45.8 | 45.8 | 45.8 | 45.8 | 45.7 | 45.7 | 45.7 | 45.7 | 45.7 | 45.7 |
| 28 | 33 | 45.1 | 45.1 | 45.1 | 45.0 | 45.0 | 44.9 | 44.9 | 44.9 | 44.9 | 44.8 | 44.8 | 44.8 | 44.8 | 44.8 | 44.8 |
| 29 | 34 | 44.3 | 44.2 | 44.2 | 44.1 | 44.1 | 44.0 | 44.0 | 44.0 | 44.0 | 43.9 | 43.9 | 43.9 | 43.9 | 43.9 | 43.8 |
| 30 | 35 | 43.4 | 43.3 | 43.3 | 43.2 | 43.2 | 43.1 | 43.1 | 43.1 | 43.1 | 43.0 | 43.0 | 43.0 | 43.0 | 42.9 | 42.9 |
| 31 | 36 | 42.5 | 42.4 | 42.4 | 42.3 | 42.3 | 42.3 | 42.2 | 42.2 | 42.2 | 42.1 | 42.1 | 42.1 | 42.1 | 42.0 | 42.0 |
| 32 | 37 | 41.6 | 41.6 | 41.5 | 41.5 | 41.4 | 41.4 | 41.3 | 41.3 | 41.3 | 41.2 | 41.2 | 41.2 | 41.2 | 41.1 | 41.1 |
| 33 | 38 | 40.8 | 40.7 | 40.7 | 40.6 | 40.5 | 40.5 | 40.5 | 40.4 | 40.4 | 40.3 | 40.3 | 40.3 | 40.3 | 40.2 | 40.2 |
| 34 | 39 | 39.9 | 39.9 | 39.8 | 39.7 | 39.7 | 39.6 | 39.6 | 39.5 | 39.5 | 39.5 | 39.4 | 39.4 | 39.4 | 39.3 | 39.3 |

| Male | Female | Ages | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 |
| | | Female 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 |
| 6 | 11 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.1 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 |
| 7 | 12 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 |
| 8 | 13 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 |
| 9 | 14 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 |
| 10 | 15 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 |
| 11 | 16 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 | 60.5 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 |
| 12 | 17 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 |
| 13 | 18 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 |
| 14 | 19 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 |
| 15 | 20 | 56.8 | 56.8 | 56.8 | 56.8 | 56.8 | 56.8 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 |
| 16 | 21 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 |
| 17 | 22 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 |
| 18 | 23 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 54.0 | 53.9 |
| 19 | 24 | 53.1 | 53.1 | 53.1 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 |
| 20 | 25 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 |
| 21 | 26 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 |
| 22 | 27 | 50.3 | 50.3 | 50.3 | 50.3 | 50.3 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 |
| 23 | 28 | 49.4 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 |
| 24 | 29 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 |
| 25 | 30 | 47.5 | 47.5 | 47.5 | 47.5 | 47.5 | 47.5 | 47.5 | 47.5 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 |
| 26 | 31 | 46.6 | 46.6 | 46.6 | 46.6 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 |
| 27 | 32 | 45.7 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 |
| 28 | 33 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 |
| 29 | 34 | 43.8 | 43.8 | 43.8 | 43.8 | 43.8 | 43.8 | 43.8 | 43.8 | 43.8 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 |
| 30 | 35 | 42.9 | 42.9 | 42.9 | 42.9 | 42.9 | 42.9 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 |
| 31 | 36 | 42.0 | 42.0 | 42.0 | 42.0 | 42.0 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 |
| 32 | 37 | 41.1 | 41.1 | 41.1 | 41.1 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 |
| 33 | 38 | 40.2 | 40.2 | 40.2 | 40.2 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 |
| 34 | 39 | 39.3 | 39.3 | 39.3 | 39.3 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 |

| Male | Female | Ages | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 |
| | | Female 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 |
| 6 | 11 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 | 65.0 |
| 7 | 12 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 | 64.1 |
| 8 | 13 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 | 63.2 |
| 9 | 14 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 | 62.3 |

| Male | Female | Ages | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 |
| | | Female 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 |
| 10 ............ | 15 ............ | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 | 61.4 |
| 11 ............ | 16 ............ | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 | 60.4 |
| 12 ............ | 17 ............ | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 | 59.5 |
| 13 ............ | 18 ............ | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 | 58.6 |
| 14 ............ | 19 ............ | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 | 57.7 |
| 15 ............ | 20 ............ | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 |
| 16 ............ | 21 ............ | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 | 55.8 |
| 17 ............ | 22 ............ | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 | 54.9 |
| 18 ............ | 23 ............ | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 | 53.9 |
| 19 ............ | 24 ............ | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 | 53.0 |
| 20 ............ | 25 ............ | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 | 52.1 |
| 21 ............ | 26 ............ | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.2 | 51.1 | 51.1 | 51.1 | 51.1 | 51.1 | 51.1 | 51.1 | 51.1 | 51.1 | 51.1 |
| 22 ............ | 27 ............ | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 | 50.2 |
| 23 ............ | 28 ............ | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 | 49.3 |
| 24 ............ | 29 ............ | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.4 | 48.3 | 48.3 |
| 25 ............ | 30 ............ | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 | 47.4 |
| 26 ............ | 31 ............ | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 | 46.5 |
| 27 ............ | 32 ............ | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 |
| 28 ............ | 33 ............ | 44.7 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 |
| 29 ............ | 34 ............ | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 |
| 30 ............ | 35 ............ | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 |
| 31 ............ | 36 ............ | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 | 41.9 |
| 32 ............ | 37 ............ | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 | 41.0 |
| 33 ............ | 38 ............ | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.1 | 40.0 |
| 34 ............ | 39 ............ | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 | 39.1 | 39.1 | 39.1 | 39.1 | 39.1 |

| Male | Female | Ages | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 |
| | | Female 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 |
| 35 .................................... | 40 .................................... | 46.2 | 45.7 | 45.3 | 44.8 | 44.4 | 44.0 | 43.6 | 43.3 | 43.0 | 42.6 | 42.3 | 42.0 | 41.8 |
| 36 .................................... | 41 .................................... | 45.7 | 45.2 | 44.8 | 44.3 | 43.9 | 43.5 | 43.1 | 42.7 | 42.3 | 42.0 | 41.7 | 41.4 | 41.1 |
| 37 .................................... | 42 .................................... | 45.3 | 44.8 | 44.3 | 43.8 | 43.4 | 42.9 | 42.5 | 42.1 | 41.8 | 41.4 | 41.1 | 40.7 | 40.4 |
| 38 .................................... | 43 .................................... | 44.8 | 44.3 | 43.8 | 43.3 | 42.9 | 42.4 | 42.0 | 41.6 | 41.2 | 40.8 | 40.5 | 40.1 | 39.8 |
| 39 .................................... | 44 .................................... | 44.4 | 43.9 | 43.4 | 42.9 | 42.4 | 41.9 | 41.5 | 41.0 | 40.6 | 40.2 | 39.9 | 39.5 | 39.2 |
| 40 .................................... | 45 .................................... | 44.0 | 43.5 | 42.9 | 42.4 | 41.9 | 41.4 | 41.0 | 40.5 | 40.1 | 39.7 | 39.3 | 38.9 | 38.6 |
| 41 .................................... | 46 .................................... | 43.6 | 43.1 | 42.5 | 42.0 | 41.5 | 41.0 | 40.5 | 40.0 | 39.6 | 39.2 | 38.8 | 38.4 | 38.0 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 42 | 47 | 43.3 | 42.7 | 42.1 | 41.6 | 41.0 | 40.5 | 40.0 | 39.6 | 39.1 | 38.7 | 38.2 | 37.8 | 37.5 |
| 43 | 48 | 43.0 | 42.3 | 41.8 | 41.2 | 40.6 | 40.1 | 39.6 | 39.1 | 38.6 | 38.2 | 37.7 | 37.3 | 36.9 |
| 44 | 49 | 42.6 | 42.0 | 41.4 | 40.8 | 40.2 | 39.7 | 39.2 | 38.7 | 38.2 | 37.7 | 37.2 | 36.8 | 36.4 |
| 45 | 50 | 42.3 | 41.7 | 41.1 | 40.5 | 39.9 | 39.3 | 38.8 | 38.2 | 37.7 | 37.2 | 36.8 | 36.3 | 35.9 |
| 46 | 51 | 42.0 | 41.4 | 40.7 | 40.1 | 39.5 | 38.9 | 38.4 | 37.8 | 37.3 | 36.8 | 36.3 | 35.9 | 35.4 |
| 47 | 52 | 41.8 | 41.1 | 40.4 | 39.8 | 39.2 | 38.6 | 38.0 | 37.5 | 36.9 | 36.4 | 35.9 | 35.4 | 35.0 |

| Male | Female | Ages | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 |
| | | Female 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 |
| 35 | 40 | 41.5 | 41.3 | 41.0 | 40.8 | 40.6 | 40.4 | 40.3 | 40.1 | 40.0 | 39.8 | 39.7 | 39.6 | 39.5 |
| 36 | 41 | 40.8 | 40.6 | 40.3 | 40.1 | 39.9 | 39.7 | 39.5 | 39.3 | 39.2 | 39.0 | 38.9 | 38.8 | 38.6 |
| 37 | 42 | 40.2 | 39.9 | 39.6 | 39.4 | 39.2 | 39.0 | 38.8 | 38.6 | 38.4 | 38.3 | 38.1 | 38.0 | 37.9 |
| 38 | 43 | 39.5 | 39.2 | 39.0 | 38.7 | 38.5 | 38.3 | 38.1 | 37.9 | 37.7 | 37.5 | 37.3 | 37.2 | 37.1 |
| 39 | 44 | 38.9 | 38.6 | 38.3 | 38.0 | 37.8 | 37.6 | 37.3 | 37.1 | 36.9 | 36.8 | 36.6 | 36.4 | 36.3 |
| 40 | 45 | 38.3 | 38.0 | 37.7 | 37.4 | 37.1 | 36.9 | 36.6 | 36.4 | 36.2 | 36.0 | 35.9 | 35.7 | 35.5 |
| 41 | 46 | 37.7 | 37.3 | 37.0 | 36.7 | 36.5 | 36.2 | 36.0 | 35.7 | 35.5 | 35.3 | 35.1 | 35.0 | 34.8 |
| 42 | 47 | 37.1 | 36.8 | 36.4 | 36.1 | 35.8 | 35.6 | 35.3 | 35.1 | 34.8 | 34.6 | 34.4 | 34.2 | 34.1 |
| 43 | 48 | 36.5 | 36.2 | 35.8 | 35.5 | 35.2 | 34.9 | 34.7 | 34.4 | 34.2 | 33.9 | 33.7 | 33.5 | 33.3 |
| 44 | 49 | 36.0 | 35.6 | 35.3 | 34.9 | 34.6 | 34.3 | 34.0 | 33.8 | 33.5 | 33.3 | 33.0 | 32.8 | 32.6 |
| 45 | 50 | 35.5 | 35.1 | 34.7 | 34.4 | 34.0 | 33.7 | 33.4 | 33.1 | 32.9 | 32.6 | 32.4 | 32.2 | 31.9 |
| 46 | 51 | 35.0 | 34.6 | 34.2 | 33.8 | 33.5 | 33.1 | 32.8 | 32.5 | 32.2 | 32.0 | 31.7 | 31.5 | 31.3 |
| 47 | 52 | 34.5 | 34.1 | 33.7 | 33.3 | 32.9 | 32.6 | 32.2 | 31.9 | 31.6 | 31.4 | 31.1 | 30.9 | 30.6 |
| 48 | 53 | 34.0 | 33.6 | 33.2 | 32.8 | 32.4 | 32.0 | 31.7 | 31.4 | 31.1 | 30.8 | 30.5 | 30.2 | 30.0 |
| 49 | 54 | 33.6 | 33.1 | 32.7 | 32.3 | 31.9 | 31.5 | 31.2 | 30.8 | 30.5 | 30.2 | 29.9 | 29.6 | 29.4 |
| 50 | 55 | 33.2 | 32.7 | 32.3 | 31.8 | 31.4 | 31.0 | 30.6 | 30.3 | 29.9 | 29.6 | 29.3 | 29.0 | 28.8 |
| 51 | 56 | 32.8 | 32.3 | 31.8 | 31.4 | 30.9 | 30.5 | 30.1 | 29.8 | 29.4 | 29.1 | 28.8 | 28.5 | 28.2 |
| 52 | 57 | 32.4 | 31.9 | 31.4 | 30.9 | 30.5 | 30.1 | 29.7 | 29.3 | 28.9 | 28.6 | 28.2 | 27.9 | 27.6 |
| 53 | 58 | 32.0 | 31.5 | 31.0 | 30.5 | 30.1 | 29.6 | 29.2 | 28.8 | 28.4 | 28.1 | 27.7 | 27.4 | 27.1 |
| 54 | 59 | 31.7 | 31.2 | 30.6 | 30.1 | 29.7 | 29.2 | 28.8 | 28.3 | 27.9 | 27.6 | 27.2 | 26.9 | 26.5 |
| 55 | 60 | 31.4 | 30.8 | 30.3 | 29.8 | 29.3 | 28.8 | 28.3 | 27.9 | 27.5 | 27.1 | 26.7 | 26.4 | 26.0 |
| 56 | 61 | 31.1 | 30.5 | 29.9 | 29.4 | 28.9 | 28.4 | 27.9 | 27.5 | 27.1 | 26.7 | 26.3 | 25.9 | 25.5 |
| 57 | 62 | 30.8 | 30.2 | 29.6 | 29.1 | 28.6 | 28.1 | 27.6 | 27.1 | 26.7 | 26.2 | 25.8 | 25.4 | 25.1 |
| 58 | 63 | 30.5 | 29.9 | 29.3 | 28.8 | 28.2 | 27.7 | 27.2 | 26.7 | 26.3 | 25.8 | 25.4 | 25.0 | 24.6 |
| 59 | 64 | 30.2 | 29.6 | 29.0 | 28.5 | 27.9 | 27.4 | 26.9 | 26.4 | 25.9 | 25.4 | 25.0 | 24.6 | 24.2 |
| 60 | 65 | 30.0 | 29.4 | 28.8 | 28.2 | 27.6 | 27.1 | 26.5 | 26.0 | 25.5 | 25.1 | 24.6 | 24.2 | 23.8 |

| Male | Female | Ages: Male 61 / Female 66 | 62 / 67 | 63 / 68 | 64 / 69 | 65 / 70 | 66 / 71 | 67 / 72 | 68 / 73 | 69 / 74 | 70 / 75 | 71 / 76 | 72 / 77 | 73 / 78 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 35 | 40 | 39.4 | 39.3 | 39.2 | 39.1 | 39.0 | 38.9 | 38.9 | 38.8 | 38.8 | 38.7 | 38.7 | 38.6 | 38.6 |
| 36 | 41 | 38.5 | 38.4 | 38.3 | 38.2 | 38.2 | 38.1 | 38.0 | 38.0 | 37.9 | 37.9 | 37.8 | 37.8 | 37.7 |
| 37 | 42 | 37.7 | 37.6 | 37.5 | 37.4 | 37.3 | 37.3 | 37.2 | 37.1 | 37.1 | 37.0 | 36.9 | 36.9 | 36.9 |
| 38 | 43 | 36.9 | 36.8 | 36.7 | 36.6 | 36.5 | 36.4 | 36.4 | 36.3 | 36.2 | 36.2 | 36.1 | 36.0 | 36.0 |
| 39 | 44 | 36.2 | 36.0 | 35.9 | 35.8 | 35.7 | 35.6 | 35.5 | 35.5 | 35.4 | 35.3 | 35.3 | 35.2 | 35.2 |
| 40 | 45 | 35.4 | 35.3 | 35.1 | 35.0 | 34.9 | 34.8 | 34.7 | 34.6 | 34.6 | 34.5 | 34.4 | 34.4 | 34.3 |
| 41 | 46 | 34.6 | 34.5 | 34.4 | 34.2 | 34.1 | 34.0 | 33.9 | 33.8 | 33.8 | 33.7 | 33.6 | 33.5 | 33.5 |
| 42 | 47 | 33.9 | 33.7 | 33.6 | 33.5 | 33.4 | 33.2 | 33.1 | 33.0 | 33.0 | 32.9 | 32.8 | 32.7 | 32.7 |
| 43 | 48 | 33.2 | 33.0 | 32.9 | 32.7 | 32.6 | 32.5 | 32.4 | 32.3 | 32.2 | 32.1 | 32.0 | 31.9 | 31.9 |
| 44 | 49 | 32.5 | 32.3 | 32.1 | 32.0 | 31.8 | 31.7 | 31.6 | 31.5 | 31.4 | 31.3 | 31.2 | 31.1 | 31.1 |
| 45 | 50 | 31.8 | 31.6 | 31.4 | 31.3 | 31.1 | 31.0 | 30.8 | 30.7 | 30.6 | 30.5 | 30.4 | 30.4 | 30.3 |
| 46 | 51 | 31.1 | 30.9 | 30.7 | 30.5 | 30.4 | 30.2 | 30.1 | 30.0 | 29.9 | 29.8 | 29.7 | 29.6 | 29.5 |
| 47 | 52 | 30.4 | 30.2 | 30.0 | 29.8 | 29.7 | 29.5 | 29.4 | 29.3 | 29.1 | 29.0 | 28.9 | 28.8 | 28.7 |
| 48 | 53 | 29.8 | 29.5 | 29.3 | 29.2 | 29.0 | 28.8 | 28.7 | 28.5 | 28.4 | 28.3 | 28.2 | 28.1 | 28.0 |
| 49 | 54 | 29.1 | 28.9 | 28.7 | 28.5 | 28.3 | 28.1 | 28.0 | 27.8 | 27.7 | 27.6 | 27.5 | 27.4 | 27.3 |
| 50 | 55 | 28.5 | 28.3 | 28.1 | 27.8 | 27.6 | 27.5 | 27.3 | 27.1 | 27.0 | 26.9 | 26.7 | 26.6 | 26.5 |
| 51 | 56 | 27.9 | 27.7 | 27.4 | 27.2 | 27.0 | 26.8 | 26.6 | 26.5 | 26.3 | 26.2 | 26.0 | 25.9 | 25.8 |
| 52 | 57 | 27.3 | 27.1 | 26.8 | 26.6 | 26.4 | 26.2 | 26.0 | 25.8 | 25.7 | 25.5 | 25.4 | 25.2 | 25.1 |
| 53 | 58 | 26.8 | 26.5 | 26.2 | 26.0 | 25.8 | 25.6 | 25.4 | 25.2 | 25.0 | 24.8 | 24.7 | 24.6 | 24.4 |
| 54 | 59 | 26.2 | 25.9 | 25.7 | 25.4 | 25.2 | 25.0 | 24.7 | 24.6 | 24.4 | 24.2 | 24.0 | 23.9 | 23.8 |
| 55 | 60 | 25.7 | 25.4 | 25.1 | 24.9 | 24.6 | 24.4 | 24.1 | 23.9 | 23.8 | 23.6 | 23.4 | 23.3 | 23.1 |
| 56 | 61 | 25.2 | 24.9 | 24.6 | 24.3 | 24.1 | 23.8 | 23.6 | 23.4 | 23.2 | 23.0 | 22.8 | 22.6 | 22.5 |
| 57 | 62 | 24.7 | 24.4 | 24.1 | 23.8 | 23.5 | 23.3 | 23.0 | 22.8 | 22.6 | 22.4 | 22.2 | 22.0 | 21.9 |
| 58 | 63 | 24.3 | 23.9 | 23.6 | 23.3 | 23.0 | 22.7 | 22.5 | 22.2 | 22.0 | 21.8 | 21.6 | 21.4 | 21.3 |
| 59 | 64 | 23.8 | 23.5 | 23.1 | 22.8 | 22.5 | 22.2 | 21.9 | 21.7 | 21.5 | 21.2 | 21.0 | 20.9 | 20.7 |
| 60 | 65 | 23.4 | 23.0 | 22.7 | 22.3 | 22.0 | 21.7 | 21.4 | 21.2 | 20.9 | 20.7 | 20.5 | 20.3 | 20.1 |
| 61 | 66 | 23.0 | 22.6 | 22.2 | 21.9 | 21.6 | 21.3 | 21.0 | 20.7 | 20.4 | 20.2 | 20.0 | 19.8 | 19.6 |
| 62 | 67 | 22.6 | 22.2 | 21.8 | 21.5 | 21.1 | 20.8 | 20.5 | 20.2 | 19.9 | 19.7 | 19.5 | 19.2 | 19.0 |
| 63 | 68 | 22.2 | 21.8 | 21.4 | 21.1 | 20.7 | 20.4 | 20.1 | 19.8 | 19.5 | 19.2 | 19.0 | 18.7 | 18.5 |
| 64 | 69 | 21.9 | 21.5 | 21.1 | 20.7 | 20.3 | 20.0 | 19.6 | 19.3 | 19.0 | 18.7 | 18.5 | 18.2 | 18.0 |
| 65 | 70 | 21.6 | 21.1 | 20.7 | 20.3 | 19.9 | 19.6 | 19.2 | 18.9 | 18.6 | 18.3 | 18.0 | 17.8 | 17.5 |
| 66 | 71 | 21.3 | 20.8 | 20.4 | 20.0 | 19.6 | 19.2 | 18.8 | 18.5 | 18.2 | 17.9 | 17.6 | 17.3 | 17.1 |
| 67 | 72 | 21.0 | 20.5 | 20.1 | 19.6 | 19.2 | 18.8 | 18.5 | 18.1 | 17.8 | 17.5 | 17.2 | 16.9 | 16.7 |
| 68 | 73 | 20.7 | 20.2 | 19.8 | 19.3 | 18.9 | 18.5 | 18.1 | 17.8 | 17.4 | 17.1 | 16.8 | 16.5 | 16.2 |
| 69 | 74 | 20.4 | 19.9 | 19.5 | 19.0 | 18.6 | 18.2 | 17.8 | 17.4 | 17.1 | 16.7 | 16.4 | 16.1 | 15.8 |
| 70 | 75 | 20.2 | 19.7 | 19.2 | 18.7 | 18.3 | 17.9 | 17.5 | 17.1 | 16.7 | 16.4 | 16.1 | 15.8 | 15.5 |
| 71 | 76 | 20.0 | 19.5 | 19.0 | 18.5 | 18.0 | 17.6 | 17.2 | 16.8 | 16.4 | 16.1 | 15.7 | 15.4 | 15.1 |
| 72 | 77 | 19.8 | 19.2 | 18.7 | 18.2 | 17.8 | 17.3 | 16.9 | 16.5 | 16.1 | 15.8 | 15.4 | 15.1 | 14.8 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 73 ........ | 78 ........ | 19.6 | 19.0 | 18.5 | 18.0 | 17.5 | 17.1 | 16.7 | 16.2 | 15.8 | 15.5 | 15.1 | 14.8 | 14.4 |

| Male | Female | Ages | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 |
| | | Female 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 |
| 35 ........ | 40 ........ | 38.6 | 38.5 | 38.5 | 38.5 | 38.4 | 38.4 | 38.4 | 38.4 | 38.4 | 38.4 | 38.3 | 38.3 |
| 36 ........ | 41 ........ | 37.7 | 37.6 | 37.6 | 37.6 | 37.6 | 27.5 | 37.5 | 37.5 | 37.5 | 37.5 | 37.5 | 37.4 |
| 37 ........ | 42 ........ | 36.8 | 36.8 | 36.7 | 36.7 | 36.7 | 36.7 | 36.6 | 36.6 | 36.6 | 36.6 | 36.6 | 36.6 |
| 38 ........ | 43 ........ | 36.0 | 35.9 | 35.9 | 35.9 | 35.8 | 35.8 | 35.8 | 35.8 | 35.7 | 35.7 | 35.7 | 35.7 |
| 39 ........ | 44 ........ | 35.1 | 35.1 | 35.0 | 35.0 | 35.0 | 34.9 | 34.9 | 34.9 | 34.9 | 34.8 | 34.8 | 34.8 |
| 40 ........ | 45 ........ | 34.3 | 34.2 | 34.2 | 34.1 | 34.1 | 34.1 | 34.1 | 34.0 | 34.0 | 34.0 | 34.0 | 34.0 |
| 41 ........ | 46 ........ | 33.4 | 33.4 | 33.3 | 33.3 | 33.3 | 33.2 | 33.2 | 33.2 | 33.2 | 33.1 | 33.1 | 33.1 |
| 42 ........ | 47 ........ | 32.6 | 32.6 | 32.5 | 32.5 | 32.4 | 32.4 | 32.4 | 32.3 | 32.3 | 32.3 | 32.3 | 32.3 |
| 43 ........ | 48 ........ | 31.8 | 31.8 | 31.7 | 31.7 | 31.6 | 31.6 | 31.5 | 31.5 | 31.5 | 31.5 | 31.4 | 31.4 |
| 44 ........ | 49 ........ | 31.0 | 30.9 | 30.9 | 30.8 | 30.8 | 30.8 | 30.7 | 30.7 | 30.7 | 30.6 | 30.6 | 30.6 |
| 45 ........ | 50 ........ | 30.2 | 30.1 | 30.1 | 30.0 | 30.0 | 29.9 | 29.9 | 29.9 | 29.8 | 29.8 | 29.8 | 29.8 |
| 46 ........ | 51 ........ | 29.4 | 29.4 | 29.3 | 29.2 | 29.2 | 29.2 | 29.1 | 29.1 | 29.0 | 29.0 | 29.0 | 28.9 |
| 47 ........ | 52 ........ | 28.7 | 28.6 | 28.5 | 28.5 | 28.4 | 28.4 | 28.3 | 28.3 | 28.2 | 28.2 | 28.2 | 28.1 |
| 48 ........ | 53 ........ | 27.9 | 27.8 | 27.8 | 27.7 | 27.6 | 27.6 | 27.5 | 27.5 | 27.5 | 27.4 | 27.4 | 27.4 |
| 49 ........ | 54 ........ | 27.2 | 27.1 | 27.0 | 26.9 | 26.9 | 26.8 | 26.8 | 26.7 | 26.7 | 26.6 | 26.6 | 26.6 |
| 50 ........ | 55 ........ | 26.4 | 26.3 | 26.3 | 26.2 | 26.1 | 26.1 | 26.0 | 26.0 | 25.9 | 25.9 | 25.8 | 25.8 |
| 51 ........ | 56 ........ | 25.7 | 25.6 | 25.5 | 25.5 | 25.4 | 25.3 | 25.3 | 25.2 | 25.2 | 25.1 | 25.1 | 25.0 |
| 52 ........ | 57 ........ | 25.0 | 24.9 | 24.8 | 24.7 | 24.7 | 24.6 | 24.5 | 24.5 | 24.4 | 24.4 | 24.3 | 24.3 |
| 53 ........ | 58 ........ | 24.3 | 24.2 | 24.1 | 24.0 | 23.9 | 23.9 | 23.8 | 23.7 | 23.7 | 23.6 | 23.6 | 23.5 |
| 54 ........ | 59 ........ | 23.6 | 23.5 | 23.4 | 23.3 | 23.2 | 23.2 | 23.1 | 23.0 | 23.0 | 22.9 | 22.9 | 22.8 |
| 55 ........ | 60 ........ | 23.0 | 22.9 | 22.8 | 22.7 | 22.6 | 22.5 | 22.4 | 22.3 | 22.3 | 22.2 | 22.2 | 22.1 |
| 56 ........ | 61 ........ | 22.3 | 22.2 | 22.1 | 22.0 | 21.9 | 21.8 | 21.7 | 21.6 | 21.6 | 21.5 | 21.5 | 21.4 |
| 57 ........ | 62 ........ | 21.7 | 21.6 | 21.5 | 21.3 | 21.2 | 21.1 | 21.1 | 21.0 | 20.9 | 20.8 | 20.8 | 20.7 |
| 58 ........ | 63 ........ | 21.1 | 21.0 | 20.8 | 20.7 | 20.6 | 20.5 | 20.4 | 20.3 | 20.2 | 20.2 | 20.1 | 20.0 |
| 59 ........ | 64 ........ | 20.5 | 20.4 | 20.2 | 20.1 | 20.0 | 19.9 | 19.8 | 19.7 | 19.6 | 19.5 | 19.4 | 19.4 |
| 60 ........ | 65 ........ | 19.9 | 19.8 | 19.6 | 19.5 | 19.4 | 19.3 | 19.1 | 19.0 | 19.0 | 18.9 | 18.8 | 18.7 |
| 61 ........ | 66 ........ | 19.4 | 19.2 | 19.1 | 18.9 | 18.8 | 18.7 | 18.5 | 18.4 | 18.3 | 18.3 | 18.2 | 18.1 |
| 62 ........ | 67 ........ | 18.8 | 18.7 | 18.5 | 18.3 | 18.2 | 18.1 | 18.0 | 17.8 | 17.7 | 17.7 | 17.6 | 17.5 |
| 63 ........ | 68 ........ | 18.3 | 18.1 | 18.0 | 17.8 | 17.6 | 17.5 | 17.4 | 17.3 | 17.2 | 17.1 | 17.0 | 16.9 |
| 64 ........ | 69 ........ | 17.8 | 17.6 | 17.4 | 17.3 | 17.1 | 17.0 | 16.8 | 16.7 | 16.6 | 16.5 | 16.4 | 16.3 |
| 65 ........ | 70 ........ | 17.3 | 17.1 | 16.9 | 16.7 | 16.6 | 16.4 | 16.3 | 16.2 | 16.0 | 15.9 | 15.8 | 15.8 |
| 66 ........ | 71 ........ | 16.9 | 16.6 | 16.4 | 16.3 | 16.1 | 15.9 | 15.8 | 15.6 | 15.5 | 15.4 | 15.3 | 15.2 |
| 67 ........ | 72 ........ | 16.4 | 16.2 | 16.0 | 15.8 | 15.6 | 15.4 | 15.3 | 15.1 | 15.0 | 14.9 | 14.8 | 14.7 |
| 68 ........ | 73 ........ | 16.0 | 15.7 | 15.5 | 15.3 | 15.1 | 15.0 | 14.8 | 14.6 | 14.5 | 14.4 | 14.3 | 14.2 |
| 69 ........ | 74 ........ | 15.6 | 15.3 | 15.1 | 14.9 | 14.7 | 14.5 | 14.3 | 14.2 | 14.0 | 13.9 | 13.8 | 13.7 |
| 70 ........ | 75 ........ | 15.2 | 14.9 | 14.7 | 14.5 | 14.3 | 14.1 | 13.9 | 13.7 | 13.6 | 13.4 | 13.3 | 13.2 |

| Male | Female | Ages Male 74 / Female 79 | 75 / 80 | 76 / 81 | 77 / 82 | 78 / 83 | 79 / 84 | 80 / 85 | 81 / 86 | 82 / 87 | 83 / 88 | 84 / 89 | 85 / 90 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 71 | 76 | 14.8 | 14.5 | 14.3 | 14.1 | 13.8 | 13.6 | 13.5 | 13.3 | 13.1 | 13.0 | 12.8 | 12.7 |
| 72 | 77 | 14.5 | 14.2 | 13.9 | 13.7 | 13.5 | 13.2 | 13.0 | 12.9 | 12.7 | 12.5 | 12.4 | 12.3 |
| 73 | 78 | 14.1 | 13.8 | 13.6 | 13.3 | 13.1 | 12.9 | 12.7 | 12.5 | 12.3 | 12.1 | 12.0 | 11.8 |
| 74 | 79 | 13.8 | 13.5 | 13.2 | 13.0 | 12.7 | 12.5 | 12.3 | 12.1 | 11.9 | 11.7 | 11.6 | 11.4 |
| 75 | 80 | 13.5 | 13.2 | 12.9 | 12.6 | 12.4 | 12.2 | 11.9 | 11.7 | 11.5 | 11.4 | 11.2 | 11.0 |
| 76 | 81 | 13.2 | 12.9 | 12.6 | 12.3 | 12.1 | 11.8 | 11.6 | 11.4 | 11.2 | 11.0 | 10.8 | 10.7 |
| 77 | 82 | 13.0 | 12.6 | 12.3 | 12.1 | 11.8 | 11.5 | 11.3 | 11.1 | 10.8 | 10.7 | 10.5 | 10.3 |
| 78 | 83 | 12.7 | 12.4 | 12.1 | 11.8 | 11.5 | 11.2 | 11.0 | 10.7 | 10.5 | 10.3 | 10.1 | 10.0 |
| 79 | 84 | 12.5 | 12.2 | 11.8 | 11.5 | 11.2 | 11.0 | 10.7 | 10.5 | 10.2 | 10.0 | 9.8 | 9.6 |
| 80 | 85 | 12.3 | 11.9 | 11.6 | 11.3 | 11.0 | 10.7 | 10.4 | 10.2 | 10.0 | 9.7 | 9.5 | 9.3 |
| 81 | 86 | 12.1 | 11.7 | 11.4 | 11.1 | 10.7 | 10.5 | 10.2 | 9.9 | 9.7 | 9.5 | 9.3 | 9.1 |
| 82 | 87 | 11.9 | 11.5 | 11.2 | 10.8 | 10.5 | 10.2 | 10.0 | 9.7 | 9.4 | 9.2 | 9.0 | 8.8 |
| 83 | 88 | 11.7 | 11.4 | 11.0 | 10.7 | 10.3 | 10.0 | 9.7 | 9.5 | 9.2 | 9.0 | 8.7 | 8.5 |
| 84 | 89 | 11.6 | 11.2 | 10.8 | 10.5 | 10.1 | 9.8 | 9.5 | 9.3 | 9.0 | 8.7 | 8.5 | 8.3 |
| 85 | 90 | 11.4 | 11.0 | 10.7 | 10.3 | 10.0 | 9.6 | 9.3 | 9.1 | 8.8 | 8.5 | 8.3 | 8.1 |

| Male | Female | Ages Male 86 / Female 91 | 87 / 92 | 88 / 93 | 89 / 94 | 90 / 95 | 91 / 96 | 92 / 97 | 93 / 98 | 94 / 99 | 95 / 100 | 96 / 101 | 97 / 102 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 35 | 40 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 |
| 36 | 41 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 |
| 37 | 42 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 |
| 38 | 43 | 35.7 | 35.7 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 |
| 39 | 44 | 34.8 | 34.8 | 34.8 | 34.8 | 34.8 | 34.8 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 |
| 40 | 45 | 33.9 | 33.9 | 33.9 | 33.9 | 33.9 | 33.9 | 33.9 | 33.9 | 33.9 | 33.9 | 33.9 | 33.9 |
| 41 | 46 | 33.1 | 33.1 | 33.1 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 |
| 42 | 47 | 32.2 | 32.2 | 32.2 | 32.2 | 32.2 | 32.2 | 32.2 | 32.2 | 32.2 | 32.1 | 32.1 | 32.1 |
| 43 | 48 | 31.4 | 31.4 | 31.4 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 |
| 44 | 49 | 30.6 | 30.5 | 30.5 | 30.5 | 30.5 | 30.5 | 30.5 | 30.5 | 30.5 | 30.5 | 30.5 | 30.4 |
| 45 | 50 | 29.7 | 29.7 | 29.7 | 29.7 | 29.7 | 29.7 | 29.7 | 29.6 | 29.6 | 29.6 | 29.6 | 29.6 |
| 46 | 51 | 28.9 | 28.9 | 28.9 | 28.9 | 28.9 | 28.8 | 28.8 | 28.8 | 28.8 | 28.8 | 28.8 | 28.8 |
| 47 | 52 | 28.1 | 28.1 | 28.1 | 28.1 | 28.0 | 28.0 | 28.0 | 28.0 | 28.0 | 28.0 | 28.0 | 28.0 |
| 48 | 53 | 27.3 | 27.3 | 27.3 | 27.3 | 27.2 | 27.2 | 27.2 | 27.2 | 27.2 | 27.2 | 27.2 | 27.2 |
| 49 | 54 | 26.5 | 26.5 | 26.5 | 26.5 | 26.5 | 26.4 | 26.4 | 26.4 | 26.4 | 26.4 | 26.4 | 26.4 |
| 50 | 55 | 25.8 | 25.7 | 25.7 | 25.7 | 25.7 | 25.7 | 25.6 | 25.6 | 25.6 | 25.6 | 25.6 | 25.6 |
| 51 | 56 | 25.0 | 25.0 | 24.9 | 24.9 | 24.9 | 24.9 | 24.9 | 24.9 | 24.8 | 24.8 | 24.8 | 24.8 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 52 | 57 | 24.3 | 24.2 | 24.2 | 24.2 | 24.1 | 24.1 | 24.1 | 24.1 | 24.1 | 24.1 | 24.1 | 24.0 |
| 53 | 58 | 23.5 | 23.5 | 23.4 | 23.4 | 23.4 | 23.4 | 23.4 | 23.3 | 23.3 | 23.3 | 23.3 | 23.3 |
| 54 | 59 | 22.8 | 22.7 | 22.7 | 22.7 | 22.7 | 22.6 | 22.6 | 22.6 | 22.6 | 22.6 | 22.6 | 22.5 |
| 55 | 60 | 22.1 | 22.0 | 22.0 | 22.0 | 21.9 | 21.9 | 21.9 | 21.9 | 21.8 | 21.8 | 21.8 | 21.8 |
| 56 | 61 | 21.4 | 21.3 | 21.3 | 21.3 | 21.2 | 21.2 | 21.2 | 21.1 | 21.1 | 21.1 | 21.1 | 21.1 |
| 57 | 62 | 20.7 | 20.6 | 20.6 | 20.6 | 20.5 | 20.5 | 20.5 | 20.4 | 20.4 | 20.4 | 20.4 | 20.4 |
| 58 | 63 | 20.0 | 19.9 | 19.9 | 19.9 | 19.8 | 19.8 | 19.8 | 19.8 | 19.7 | 19.7 | 19.7 | 19.7 |
| 59 | 64 | 19.3 | 19.3 | 19.2 | 19.2 | 19.2 | 19.1 | 19.1 | 19.1 | 19.0 | 19.0 | 19.0 | 19.0 |

| Male | Female | Ages | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 |
| | | Female 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 |
| 35 | 40 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.3 | 38.2 | 38.2 | 38.2 | 38.2 | 38.2 |
| 36 | 41 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.4 | 37.3 |
| 37 | 42 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 | 36.5 |
| 38 | 43 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 | 35.6 |
| 39 | 44 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 | 34.7 |
| 40 | 45 | 33.9 | 33.8 | 33.8 | 33.8 | 33.8 | 33.8 | 33.8 | 33.8 | 33.8 | 33.8 | 33.8 |
| 41 | 46 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 | 33.0 |
| 42 | 47 | 32.1 | 32.1 | 32.1 | 32.1 | 32.1 | 32.1 | 32.1 | 32.1 | 32.1 | 32.1 | 32.1 |
| 43 | 48 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 | 31.3 |
| 44 | 49 | 30.4 | 30.4 | 30.4 | 30.4 | 30.4 | 30.4 | 30.4 | 30.4 | 30.4 | 30.4 | 30.4 |
| 45 | 50 | 29.6 | 29.6 | 29.6 | 29.6 | 29.6 | 29.6 | 29.6 | 29.6 | 29.6 | 29.6 | 29.6 |
| 46 | 51 | 28.8 | 28.8 | 28.8 | 28.8 | 28.8 | 28.8 | 28.8 | 28.8 | 28.8 | 28.8 | 28.7 |
| 47 | 52 | 28.0 | 28.0 | 28.0 | 28.0 | 28.0 | 28.0 | 28.0 | 27.9 | 27.9 | 27.9 | 27.9 |
| 48 | 53 | 27.2 | 27.2 | 27.2 | 27.2 | 27.2 | 27.1 | 27.1 | 27.1 | 27.1 | 27.1 | 27.1 |
| 49 | 54 | 26.4 | 26.4 | 26.4 | 26.4 | 26.4 | 26.3 | 26.3 | 26.3 | 26.3 | 26.3 | 26.3 |
| 50 | 55 | 25.6 | 25.6 | 25.6 | 25.6 | 25.6 | 25.6 | 25.6 | 25.6 | 25.5 | 25.5 | 25.5 |
| 51 | 56 | 24.8 | 24.8 | 24.8 | 24.8 | 24.8 | 24.8 | 24.8 | 24.8 | 24.8 | 24.8 | 24.7 |
| 52 | 57 | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 |
| 53 | 58 | 23.3 | 23.3 | 23.3 | 23.3 | 23.3 | 23.3 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 |
| 54 | 59 | 22.5 | 22.5 | 22.5 | 22.5 | 22.5 | 22.5 | 22.5 | 22.5 | 22.5 | 22.5 | 22.5 |
| 55 | 60 | 21.8 | 21.8 | 21.8 | 21.8 | 21.8 | 21.8 | 21.8 | 21.8 | 21.8 | 21.7 | 21.7 |
| 56 | 61 | 21.1 | 21.1 | 21.1 | 21.1 | 21.1 | 21.0 | 21.0 | 21.0 | 21.0 | 21.0 | 21.0 |
| 57 | 62 | 20.4 | 20.4 | 20.4 | 20.3 | 20.3 | 20.3 | 20.3 | 20.3 | 20.3 | 20.3 | 20.3 |
| 58 | 63 | 19.7 | 19.7 | 19.7 | 19.6 | 19.6 | 19.6 | 19.6 | 19.6 | 19.6 | 19.6 | 19.6 |
| 59 | 64 | 19.0 | 19.0 | 19.0 | 19.0 | 19.0 | 18.9 | 18.9 | 18.9 | 18.9 | 18.9 | 18.9 |

| Male | Female | Ages | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 |
| | | Female 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 |
| 60 | 65 | 18.7 | 18.6 | 18.6 | 18.5 | 18.5 | 18.5 | 18.4 | 18.4 | 18.4 | 18.4 | 18.3 | 18.3 |
| 61 | 66 | 18.1 | 18.0 | 17.9 | 17.9 | 17.9 | 17.8 | 17.8 | 17.8 | 17.7 | 17.7 | 17.7 | 17.7 |
| 62 | 67 | 17.4 | 17.4 | 17.3 | 17.3 | 17.2 | 17.2 | 17.1 | 17.1 | 17.1 | 17.1 | 17.0 | 17.0 |
| 63 | 68 | 16.8 | 16.8 | 16.7 | 16.7 | 16.6 | 16.6 | 16.5 | 16.5 | 16.5 | 16.4 | 16.4 | 16.4 |
| 64 | 69 | 16.2 | 16.2 | 16.1 | 16.1 | 16.0 | 16.0 | 15.9 | 15.9 | 15.9 | 15.8 | 15.8 | 15.8 |
| 65 | 70 | 15.7 | 15.6 | 15.5 | 15.5 | 15.4 | 15.4 | 15.3 | 15.3 | 15.3 | 15.2 | 15.2 | 15.2 |
| 66 | 71 | 15.1 | 15.0 | 15.0 | 14.9 | 14.8 | 14.8 | 14.7 | 14.7 | 14.7 | 14.6 | 14.6 | 14.6 |
| 67 | 72 | 14.6 | 14.5 | 14.4 | 14.4 | 14.3 | 14.2 | 14.2 | 14.1 | 14.1 | 14.1 | 14.1 | 14.0 |
| 68 | 73 | 14.1 | 14.0 | 13.9 | 13.8 | 13.8 | 13.7 | 13.6 | 13.6 | 13.6 | 13.5 | 13.5 | 13.5 |
| 69 | 74 | 13.6 | 13.5 | 13.4 | 13.3 | 13.2 | 13.2 | 13.1 | 13.1 | 13.0 | 13.0 | 13.0 | 12.9 |
| 70 | 75 | 13.1 | 13.0 | 12.9 | 12.8 | 12.7 | 12.7 | 12.6 | 12.5 | 12.5 | 12.5 | 12.4 | 12.4 |
| 71 | 76 | 12.6 | 12.5 | 12.4 | 12.3 | 12.2 | 12.2 | 12.1 | 12.1 | 12.0 | 12.0 | 11.9 | 11.9 |
| 72 | 77 | 12.1 | 12.0 | 11.9 | 11.8 | 11.8 | 11.7 | 11.6 | 11.6 | 11.5 | 11.5 | 11.4 | 11.4 |
| 73 | 78 | 11.7 | 11.6 | 11.5 | 11.4 | 11.3 | 11.2 | 11.2 | 11.1 | 11.0 | 11.0 | 11.0 | 10.9 |
| 74 | 79 | 11.3 | 11.2 | 11.1 | 11.0 | 10.9 | 10.8 | 10.7 | 10.7 | 10.6 | 10.6 | 10.5 | 10.5 |
| 75 | 80 | 10.9 | 10.8 | 10.7 | 10.5 | 10.5 | 10.4 | 10.3 | 10.2 | 10.2 | 10.1 | 10.1 | 10.0 |
| 76 | 81 | 10.5 | 10.4 | 10.3 | 10.2 | 10.1 | 10.0 | 9.9 | 9.8 | 9.7 | 9.7 | 9.7 | 9.6 |
| 77 | 82 | 10.2 | 10.0 | 9.9 | 9.8 | 9.7 | 9.6 | 9.5 | 9.4 | 9.3 | 9.3 | 9.2 | 9.2 |
| 78 | 83 | 9.8 | 9.7 | 9.5 | 9.4 | 9.3 | 9.2 | 9.1 | 9.0 | 9.0 | 8.9 | 8.9 | 8.8 |
| 79 | 84 | 9.5 | 9.3 | 9.2 | 9.2 | 8.9 | 8.8 | 8.8 | 8.7 | 8.6 | 8.5 | 8.5 | 8.4 |
| 80 | 85 | 9.2 | 9.0 | 8.9 | 8.7 | 8.6 | 8.5 | 8.4 | 8.3 | 8.3 | 8.2 | 8.1 | 8.1 |
| 81 | 86 | 8.9 | 8.7 | 8.6 | 8.4 | 8.3 | 8.2 | 8.1 | 8.0 | 7.9 | 7.9 | 7.8 | 7.7 |
| 82 | 87 | 8.6 | 8.4 | 8.3 | 8.1 | 8.0 | 7.9 | 7.8 | 7.7 | 7.6 | 7.5 | 7.5 | 7.4 |
| 83 | 88 | 8.3 | 8.2 | 8.0 | 7.9 | 7.7 | 7.6 | 7.5 | 7.4 | 7.3 | 7.2 | 7.2 | 7.1 |
| 84 | 89 | 8.1 | 7.9 | 7.8 | 7.6 | 7.5 | 7.3 | 7.2 | 7.1 | 7.0 | 7.0 | 6.9 | 6.8 |

| Male | Female | Ages | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 |
| | | Female 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 |
| 60 | 65 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.2 | 18.2 | 18.2 | 18.2 |
| 61 | 66 | 17.7 | 17.7 | 17.6 | 17.6 | 17.6 | 17.6 | 17.6 | 17.6 | 17.6 | 17.6 | 17.5 |
| 62 | 67 | 17.0 | 17.0 | 17.0 | 17.0 | 17.0 | 17.0 | 16.9 | 16.9 | 16.9 | 16.9 | 16.9 |
| 63 | 68 | 16.4 | 16.4 | 16.4 | 16.3 | 16.3 | 16.3 | 16.3 | 16.3 | 16.3 | 16.3 | 16.2 |
| 64 | 69 | 15.8 | 15.8 | 15.7 | 15.7 | 15.7 | 15.7 | 15.7 | 15.7 | 15.7 | 15.7 | 15.6 |
| 65 | 70 | 15.2 | 15.2 | 15.1 | 15.1 | 15.1 | 15.1 | 15.1 | 15.1 | 15.1 | 15.0 | 15.0 |
| 66 | 71 | 14.6 | 14.6 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.4 | 14.4 |
| 67 | 72 | 14.0 | 14.0 | 14.0 | 14.0 | 13.9 | 13.9 | 13.9 | 13.9 | 13.9 | 13.9 | 13.8 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 68 | 73 | 13.5 | 13.4 | 13.4 | 13.4 | 13.4 | 13.4 | 13.3 | 13.3 | 13.3 | 13.3 | 13.2 |
| 69 | 74 | 12.9 | 12.9 | 12.9 | 12.8 | 12.8 | 12.8 | 12.8 | 12.8 | 12.8 | 12.7 | 12.7 |
| 70 | 75 | 12.4 | 12.4 | 12.3 | 12.3 | 12.3 | 12.3 | 12.3 | 12.2 | 12.2 | 12.2 | 12.1 |
| 71 | 76 | 11.9 | 11.9 | 11.8 | 11.8 | 11.8 | 11.8 | 11.7 | 11.7 | 11.7 | 11.7 | 11.6 |
| 72 | 77 | 11.4 | 11.4 | 11.3 | 11.3 | 11.3 | 11.3 | 11.2 | 11.2 | 11.2 | 11.2 | 11.1 |
| 73 | 78 | 10.9 | 10.9 | 10.9 | 10.8 | 10.8 | 10.8 | 10.7 | 10.7 | 10.7 | 10.7 | 10.6 |
| 74 | 79 | 10.5 | 10.4 | 10.4 | 10.4 | 10.3 | 10.3 | 10.3 | 10.3 | 10.2 | 10.2 | 10.1 |
| 75 | 80 | 10.0 | 10.0 | 9.9 | 9.9 | 9.9 | 9.8 | 9.8 | 9.8 | 9.8 | 9.7 | |
| 76 | 81 | 9.6 | 9.5 | 9.5 | 9.5 | 9.4 | 9.4 | 9.4 | 9.4 | 9.3 | 9.3 | |
| 77 | 82 | 9.2 | 9.1 | 9.1 | 9.1 | 9.0 | 9.0 | 9.0 | 8.9 | 8.9 | 8.9 | |
| 78 | 83 | 8.8 | 8.7 | 8.7 | 8.7 | 8.6 | 8.6 | 8.5 | 8.5 | 8.5 | 8.4 | |
| 79 | 84 | 8.4 | 8.4 | 8.3 | 8.3 | 8.2 | 8.2 | 8.2 | 8.1 | 8.1 | 8.0 | |
| 80 | 85 | 8.0 | 8.0 | 7.9 | 7.9 | 7.9 | 7.8 | 7.8 | 7.7 | 7.7 | 7.6 | |
| 81 | 86 | 7.7 | 7.6 | 7.6 | 7.6 | 7.5 | 7.5 | 7.4 | 7.4 | 7.3 | 7.3 | |
| 82 | 87 | 7.4 | 7.3 | 7.3 | 7.2 | 7.2 | 7.1 | 7.1 | 7.0 | 7.0 | 6.9 | |
| 83 | 88 | 7.1 | 7.0 | 6.9 | 6.9 | 6.8 | 6.8 | 6.7 | 6.7 | 6.7 | 6.6 | |
| 84 | 89 | 6.8 | 6.7 | 6.6 | 6.6 | 6.5 | 6.5 | 6.4 | 6.4 | 6.3 | ........... | ........... |

| Male | Female | Ages | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 |
| | | Female 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 |
| 85 | 90 | 7.9 | 7.7 | 7.5 | 7.4 | 7.2 | 7.1 | 7.0 | 6.9 | 6.8 | 6.7 | 6.6 |
| 86 | 91 | 7.7 | 7.5 | 7.3 | 7.1 | 7.0 | 6.8 | 6.7 | 6.6 | 6.5 | 6.4 | 6.4 |
| 87 | 92 | 7.5 | 7.3 | 7.1 | 6.9 | 6.8 | 6.6 | 6.5 | 6.4 | 6.3 | 6.2 | 6.1 |
| 88 | 93 | 7.3 | 7.1 | 6.9 | 6.7 | 6.6 | 6.4 | 6.3 | 6.2 | 6.1 | 6.0 | 5.9 |
| 89 | 94 | 7.1 | 6.9 | 6.7 | 6.5 | 6.4 | 6.2 | 6.1 | 6.0 | 5.9 | 5.8 | 5.7 |
| 90 | 95 | 7.0 | 6.8 | 6.6 | 6.4 | 6.2 | 6.1 | 5.9 | 5.8 | 5.7 | 5.6 | 5.5 |
| 91 | 96 | 6.8 | 6.6 | 6.4 | 6.2 | 6.1 | 5.9 | 5.8 | 5.7 | 5.5 | 5.4 | 5.3 |
| 92 | 97 | 6.7 | 6.5 | 6.3 | 6.1 | 5.9 | 5.8 | 5.6 | 5.5 | 5.4 | 5.3 | 5.2 |
| 93 | 98 | 6.6 | 6.4 | 6.2 | 6.0 | 5.8 | 5.7 | 5.5 | 5.4 | 5.2 | 5.1 | 5.0 |
| 94 | 99 | 6.5 | 6.3 | 6.1 | 5.9 | 5.7 | 5.5 | 5.4 | 5.2 | 5.1 | 5.0 | 4.9 |
| 95 | 100 | 6.4 | 6.2 | 6.0 | 5.8 | 5.6 | 5.4 | 5.3 | 5.1 | 5.0 | 4.9 | 4.7 |
| 96 | 101 | 6.4 | 6.1 | 5.9 | 5.7 | 5.5 | 5.3 | 5.2 | 5.0 | 4.9 | 4.7 | 4.6 |
| 97 | 102 | 6.3 | 6.1 | 5.8 | 5.6 | 5.4 | 5.2 | 5.1 | 4.9 | 4.8 | 4.6 | 4.5 |
| 98 | 103 | 6.2 | 6.0 | 5.8 | 5.5 | 5.3 | 5.1 | 5.0 | 4.8 | 4.7 | 4.5 | 4.4 |
| 99 | 104 | 6.2 | 5.9 | 5.7 | 5.5 | 5.2 | 5.1 | 4.9 | 4.7 | 4.6 | 4.4 | 4.3 |

| Male | Female | Ages | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 |
| | | Female 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 |
| 85 | 90 | 6.6 | 6.5 | 6.4 | 6.4 | 6.3 | 6.2 | 6.2 | 6.1 | 6.1 | 6.0 |
| 86 | 91 | 6.3 | 6.2 | 6.2 | 6.1 | 6.0 | 6.0 | 5.9 | 5.9 | 5.8 | 5.7 |
| 87 | 92 | 6.1 | 6.0 | 5.9 | 5.8 | 5.8 | 5.7 | 5.6 | 5.6 | 5.5 | 5.4 |
| 88 | 93 | 5.8 | 5.8 | 5.7 | 5.6 | 5.5 | 5.5 | 5.4 | 5.3 | 5.3 | 5.1 |
| 89 | 94 | 5.6 | 5.5 | 5.5 | 5.4 | 5.3 | 5.2 | 5.2 | 5.1 | 5.0 | |
| 90 | 95 | 5.4 | 5.3 | 5.2 | 5.2 | 5.1 | 5.0 | 4.9 | 4.9 | 4.8 | |
| 91 | 96 | 5.2 | 5.1 | 5.1 | 5.0 | 4.9 | 4.8 | 4.7 | 4.6 | 4.5 | |
| 92 | 97 | 5.1 | 5.0 | 4.9 | 4.8 | 4.7 | 4.6 | 4.5 | 4.4 | | |
| 93 | 98 | 4.9 | 4.8 | 4.7 | 4.6 | 4.5 | 4.4 | 4.3 | 4.2 | | |
| 94 | 99 | 4.8 | 4.7 | 4.6 | 4.5 | 4.4 | 4.3 | 4.1 | | | |
| 95 | 100 | 4.6 | 4.5 | 4.4 | 4.3 | 4.2 | 4.1 | 4.0 | | | |
| 96 | 101 | 4.5 | 4.4 | 4.3 | 4.2 | 4.1 | 3.9 | | | | |
| 97 | 102 | 4.4 | 4.3 | 4.1 | 4.0 | 3.9 | 3.7 | | | | |
| 98 | 103 | 4.3 | 4.1 | 4.0 | 3.9 | 3.7 | | | | | |
| 99 | 104 | 4.1 | 4.0 | 3.9 | 3.7 | ............ | ............ | ............ | ............ | ............ | ............ |

TABLE IIA—ANNUITIES FOR JOINT LIFE ONLY—TWO LIVES—EXPECTED RETURN MULTIPLES

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| | | Female 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 6 | 11 | 56.6 | 56.1 | 55.7 | 55.1 | 54.6 | 54.1 | 53.5 | 52.9 | 52.3 | 51.7 | 51.1 | 50.5 | 49.8 | 49.1 | 48.4 |
| 7 | 12 | 56.1 | 55.7 | 55.2 | 54.7 | 54.2 | 53.7 | 53.1 | 52.6 | 52.0 | 51.4 | 50.8 | 50.2 | 49.5 | 48.9 | 48.2 |
| 8 | 13 | 55.7 | 55.2 | 54.8 | 54.3 | 53.8 | 53.3 | 52.8 | 52.2 | 51.6 | 51.1 | 50.5 | 49.9 | 49.2 | 48.6 | 47.9 |
| 9 | 14 | 55.1 | 54.7 | 54.3 | 53.8 | 53.3 | 52.9 | 52.3 | 51.8 | 51.3 | 50.7 | 50.1 | 49.5 | 48.9 | 48.3 | 47.7 |
| 10 | 15 | 54.6 | 54.2 | 53.8 | 53.3 | 52.9 | 52.4 | 51.9 | 51.4 | 50.9 | 50.3 | 49.8 | 49.2 | 48.6 | 48.0 | 47.4 |
| 11 | 16 | 54.1 | 53.7 | 53.3 | 52.9 | 52.4 | 52.0 | 51.5 | 51.0 | 50.5 | 50.0 | 49.4 | 48.8 | 48.3 | 47.7 | 47.1 |
| 12 | 17 | 53.5 | 53.1 | 52.8 | 52.3 | 51.9 | 51.5 | 51.0 | 50.6 | 50.1 | 49.6 | 49.0 | 48.5 | 47.9 | 47.3 | 46.7 |
| 13 | 18 | 52.9 | 52.6 | 52.2 | 51.8 | 51.4 | 51.0 | 50.6 | 50.1 | 49.6 | 49.1 | 48.6 | 48.1 | 47.5 | 47.0 | 46.4 |
| 14 | 19 | 52.3 | 52.0 | 51.6 | 51.3 | 50.9 | 50.5 | 50.1 | 49.6 | 49.2 | 48.7 | 48.2 | 47.7 | 47.2 | 46.6 | 46.1 |
| 15 | 20 | 51.7 | 51.4 | 51.1 | 50.7 | 50.3 | 50.0 | 49.6 | 49.1 | 48.7 | 48.2 | 47.8 | 47.3 | 46.8 | 46.2 | 45.7 |
| 16 | 21 | 51.1 | 50.8 | 50.5 | 50.1 | 49.8 | 49.4 | 49.0 | 48.6 | 48.2 | 47.8 | 47.3 | 46.8 | 46.3 | 45.8 | 45.3 |
| 17 | 22 | 50.5 | 50.2 | 49.9 | 49.5 | 49.2 | 48.8 | 48.5 | 48.1 | 47.7 | 47.3 | 46.8 | 46.4 | 45.9 | 45.4 | 44.9 |
| 18 | 23 | 49.8 | 49.5 | 49.2 | 48.9 | 48.6 | 48.3 | 47.9 | 47.5 | 47.2 | 46.8 | 46.3 | 45.9 | 45.4 | 45.0 | 44.5 |
| 19 | 24 | 49.1 | 48.9 | 48.6 | 48.3 | 48.0 | 47.7 | 47.3 | 47.0 | 46.6 | 46.2 | 45.8 | 45.4 | 45.0 | 44.5 | 44.0 |
| 20 | 25 | 48.4 | 48.2 | 47.9 | 47.7 | 47.4 | 47.1 | 46.7 | 46.4 | 46.1 | 45.7 | 45.3 | 44.9 | 44.5 | 44.0 | 43.6 |

| Male | Female | Ages | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 |
| | | Female 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 |
| 6 | 11 | 47.7 | 47.0 | 46.3 | 45.6 | 44.8 | 44.1 | 43.3 | 42.5 | 41.8 | 41.0 | 40.2 | 39.4 | 38.6 | 37.8 |
| 7 | 12 | 47.5 | 46.8 | 46.1 | 45.4 | 44.6 | 43.9 | 43.2 | 42.4 | 41.6 | 40.9 | 40.1 | 39.3 | 38.5 | 37.7 |
| 8 | 13 | 47.3 | 46.6 | 45.9 | 45.2 | 44.5 | 43.7 | 43.0 | 42.2 | 41.5 | 40.7 | 39.9 | 39.2 | 38.4 | 37.6 |
| 9 | 14 | 47.0 | 46.3 | 45.6 | 45.0 | 44.2 | 43.5 | 42.8 | 42.1 | 41.3 | 40.6 | 39.8 | 39.0 | 38.3 | 37.5 |
| 10 | 15 | 46.7 | 46.1 | 45.4 | 44.7 | 44.0 | 43.3 | 42.6 | 41.9 | 41.1 | 40.4 | 39.7 | 38.9 | 38.1 | 37.4 |
| 11 | 16 | 46.4 | 45.8 | 45.1 | 44.5 | 43.8 | 43.1 | 42.4 | 41.7 | 41.0 | 40.2 | 39.5 | 38.8 | 38.0 | 37.2 |
| 12 | 17 | 46.1 | 45.5 | 44.9 | 44.2 | 43.6 | 42.9 | 42.2 | 41.5 | 40.8 | 40.1 | 39.3 | 38.6 | 37.9 | 37.1 |
| 13 | 18 | 45.8 | 45.2 | 44.6 | 43.9 | 43.3 | 42.6 | 42.0 | 41.3 | 40.6 | 39.9 | 39.2 | 38.4 | 37.7 | 37.0 |
| 14 | 19 | 45.5 | 44.9 | 44.3 | 43.7 | 43.0 | 42.4 | 41.7 | 41.0 | 40.4 | 39.7 | 39.0 | 38.3 | 37.5 | 36.8 |
| 15 | 20 | 45.1 | 44.6 | 44.0 | 43.4 | 42.7 | 42.1 | 41.5 | 40.8 | 40.1 | 39.5 | 38.8 | 38.1 | 37.4 | 36.6 |
| 16 | 21 | 44.8 | 44.2 | 43.6 | 43.0 | 42.4 | 41.8 | 41.2 | 40.5 | 39.9 | 39.2 | 38.6 | 37.9 | 37.2 | 36.5 |
| 17 | 22 | 44.4 | 43.8 | 43.3 | 42.7 | 42.1 | 41.5 | 40.9 | 40.3 | 39.6 | 39.0 | 38.3 | 37.7 | 37.0 | 36.3 |
| 18 | 23 | 44.0 | 43.5 | 42.9 | 42.4 | 41.8 | 41.2 | 40.6 | 40.0 | 39.4 | 38.7 | 38.1 | 37.4 | 36.8 | 36.1 |
| 19 | 24 | 43.6 | 43.1 | 42.5 | 42.0 | 41.4 | 40.9 | 40.3 | 39.7 | 39.1 | 38.5 | 37.8 | 37.2 | 36.5 | 35.9 |
| 20 | 25 | 43.1 | 42.6 | 42.1 | 41.6 | 41.1 | 40.5 | 40.0 | 39.4 | 38.8 | 38.2 | 37.6 | 36.9 | 36.3 | 35.7 |
| 21 | 26 | 42.7 | 42.2 | 41.7 | 41.2 | 40.7 | 40.2 | 39.6 | 39.1 | 38.5 | 37.9 | 37.3 | 36.7 | 36.1 | 35.4 |
| 22 | 27 | 42.2 | 41.8 | 41.3 | 40.8 | 40.3 | 39.8 | 39.3 | 38.7 | 38.2 | 37.6 | 37.0 | 36.4 | 35.8 | 35.2 |
| 23 | 28 | 41.7 | 41.3 | 40.8 | 40.4 | 39.9 | 39.4 | 38.9 | 38.4 | 37.8 | 37.3 | 36.7 | 36.1 | 35.5 | 34.9 |
| 24 | 29 | 41.2 | 40.8 | 40.4 | 39.9 | 39.5 | 39.0 | 38.5 | 38.0 | 37.5 | 36.9 | 36.4 | 35.8 | 35.2 | 34.6 |
| 25 | 30 | 40.7 | 40.3 | 39.9 | 39.5 | 39.0 | 38.6 | 38.1 | 37.6 | 37.1 | 36.6 | 36.0 | 35.5 | 34.9 | 34.4 |
| 26 | 31 | 40.2 | 39.8 | 39.4 | 39.0 | 38.6 | 38.1 | 37.7 | 37.2 | 36.7 | 36.2 | 35.7 | 35.2 | 34.6 | 34.1 |
| 27 | 32 | 39.6 | 39.3 | 38.9 | 38.5 | 38.1 | 37.7 | 37.2 | 36.8 | 36.3 | 35.8 | 35.3 | 34.8 | 34.3 | 33.7 |
| 28 | 33 | 39.1 | 38.7 | 38.4 | 38.0 | 37.6 | 37.2 | 36.8 | 36.3 | 35.9 | 35.4 | 34.9 | 34.5 | 33.9 | 33.4 |
| 29 | 34 | 38.5 | 38.2 | 37.8 | 37.5 | 37.1 | 36.7 | 36.3 | 35.9 | 35.5 | 35.0 | 34.6 | 34.1 | 33.6 | 33.1 |
| 30 | 35 | 37.9 | 37.6 | 37.3 | 36.9 | 36.6 | 36.2 | 35.8 | 35.4 | 35.0 | 34.6 | 34.1 | 33.7 | 33.2 | 32.7 |
| 31 | 36 | 37.3 | 37.0 | 36.7 | 36.4 | 36.0 | 35.7 | 35.3 | 34.9 | 34.6 | 34.1 | 33.7 | 33.3 | 32.8 | 32.3 |
| 32 | 37 | 36.7 | 36.4 | 36.1 | 35.8 | 35.5 | 35.2 | 34.8 | 34.5 | 34.1 | 33.7 | 33.3 | 32.9 | 32.4 | 32.0 |
| 33 | 38 | 36.1 | 35.8 | 35.5 | 35.2 | 34.9 | 34.6 | 34.3 | 33.9 | 33.6 | 33.2 | 32.8 | 32.4 | 32.0 | 31.6 |
| 34 | 39 | 35.4 | 35.2 | 34.9 | 34.6 | 34.4 | 34.1 | 33.7 | 33.4 | 33.1 | 32.7 | 32.3 | 32.0 | 31.6 | 31.1 |

| Male | Female | Ages | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 |
| | | Female 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 |
| 6 | 11 | 37.0 | 36.2 | 35.4 | 34.6 | 33.8 | 33.0 | 32.2 | 31.4 | 30.6 | 29.8 | 29.0 | 28.2 | 27.5 | 26.7 | 25.9 |
| 7 | 12 | 36.9 | 36.1 | 35.3 | 34.5 | 33.7 | 32.9 | 32.1 | 31.3 | 30.5 | 29.8 | 29.0 | 28.2 | 27.4 | 26.7 | 25.9 |
| 8 | 13 | 36.8 | 36.0 | 35.2 | 34.4 | 33.7 | 32.9 | 32.1 | 31.3 | 30.5 | 29.7 | 28.9 | 28.2 | 27.4 | 26.6 | 25.9 |
| 9 | 14 | 36.7 | 35.9 | 35.1 | 34.4 | 33.6 | 32.8 | 32.0 | 31.2 | 30.4 | 29.7 | 28.9 | 28.1 | 27.3 | 26.6 | 25.8 |

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 |
| | | Female 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 |
| 10 | 15 | 36.6 | 35.8 | 35.1 | 34.3 | 33.5 | 32.7 | 31.9 | 31.2 | 30.4 | 29.6 | 28.8 | 28.1 | 27.3 | 26.5 | 25.8 |
| 11 | 16 | 36.5 | 35.7 | 34.9 | 34.2 | 33.4 | 32.6 | 31.9 | 31.1 | 30.3 | 29.5 | 28.8 | 28.0 | 27.3 | 26.5 | 25.7 |
| 12 | 17 | 36.4 | 35.6 | 34.8 | 34.1 | 33.3 | 32.5 | 31.8 | 31.0 | 30.2 | 29.5 | 28.7 | 28.0 | 27.2 | 26.4 | 25.7 |
| 13 | 18 | 36.2 | 35.5 | 34.7 | 34.0 | 33.2 | 32.4 | 31.7 | 30.9 | 30.2 | 29.4 | 28.7 | 27.9 | 27.1 | 26.4 | 25.7 |
| 14 | 19 | 36.1 | 35.3 | 34.6 | 33.8 | 33.1 | 32.3 | 31.6 | 30.8 | 30.1 | 29.3 | 28.6 | 27.8 | 27.1 | 26.3 | 25.6 |
| 15 | 20 | 35.9 | 35.2 | 34.5 | 33.7 | 33.0 | 32.2 | 31.5 | 30.7 | 30.0 | 29.3 | 28.5 | 27.8 | 27.0 | 26.3 | 25.6 |
| 16 | 21 | 35.8 | 35.0 | 34.3 | 33.6 | 32.9 | 32.1 | 31.4 | 30.6 | 29.9 | 29.2 | 28.4 | 27.7 | 27.0 | 26.2 | 25.5 |
| 17 | 22 | 35.6 | 34.9 | 34.2 | 33.4 | 32.7 | 32.0 | 31.3 | 30.5 | 29.8 | 29.1 | 28.3 | 27.6 | 26.9 | 26.2 | 25.4 |
| 18 | 23 | 35.4 | 34.7 | 34.0 | 33.3 | 32.6 | 31.9 | 31.2 | 30.4 | 29.7 | 29.0 | 28.3 | 27.5 | 26.8 | 26.1 | 25.4 |
| 19 | 24 | 35.2 | 34.5 | 33.8 | 33.1 | 32.4 | 31.7 | 31.0 | 30.3 | 29.6 | 28.9 | 28.2 | 27.4 | 26.7 | 26.0 | 25.3 |
| 20 | 25 | 35.0 | 34.3 | 33.7 | 33.0 | 32.3 | 31.6 | 30.9 | 30.2 | 29.5 | 28.8 | 28.1 | 27.3 | 26.6 | 25.9 | 25.2 |
| 21 | 26 | 34.8 | 34.1 | 33.5 | 32.8 | 32.1 | 31.4 | 30.7 | 30.0 | 29.3 | 28.6 | 27.9 | 27.2 | 26.5 | 25.8 | 25.1 |
| 22 | 27 | 34.5 | 33.9 | 33.3 | 32.6 | 31.9 | 31.3 | 30.6 | 29.9 | 29.2 | 28.5 | 27.8 | 27.1 | 26.4 | 25.7 | 25.1 |
| 23 | 28 | 34.3 | 33.7 | 33.0 | 32.4 | 31.7 | 31.1 | 30.4 | 29.7 | 29.1 | 28.4 | 27.7 | 27.0 | 26.3 | 25.6 | 25.0 |
| 24 | 29 | 34.0 | 33.4 | 32.8 | 32.2 | 31.5 | 30.9 | 30.2 | 29.6 | 28.9 | 28.2 | 27.6 | 26.9 | 26.2 | 25.5 | 24.9 |
| 25 | 30 | 33.8 | 33.2 | 32.6 | 32.0 | 31.3 | 30.7 | 30.1 | 29.4 | 28.8 | 28.1 | 27.4 | 26.8 | 26.1 | 25.4 | 24.8 |
| 26 | 31 | 33.5 | 32.9 | 32.3 | 31.7 | 31.1 | 30.5 | 29.9 | 29.2 | 28.6 | 27.9 | 27.3 | 26.6 | 26.0 | 25.3 | 24.6 |
| 27 | 32 | 33.2 | 32.6 | 32.1 | 31.5 | 30.9 | 30.3 | 29.6 | 29.0 | 28.4 | 27.8 | 27.1 | 26.5 | 25.8 | 25.2 | 24.5 |
| 28 | 33 | 32.9 | 32.3 | 31.8 | 31.2 | 30.6 | 30.0 | 29.4 | 28.8 | 28.2 | 27.6 | 27.0 | 26.3 | 25.7 | 25.0 | 24.4 |
| 29 | 34 | 32.6 | 32.0 | 31.5 | 30.9 | 30.4 | 29.8 | 29.2 | 28.6 | 28.0 | 27.4 | 26.8 | 26.2 | 25.5 | 24.9 | 24.3 |
| 30 | 35 | 32.2 | 31.7 | 31.2 | 30.6 | 30.1 | 29.5 | 29.0 | 28.4 | 27.8 | 27.2 | 26.6 | 26.0 | 25.4 | 24.7 | 24.1 |
| 31 | 36 | 31.9 | 31.4 | 30.9 | 30.3 | 29.8 | 29.3 | 28.7 | 28.1 | 27.6 | 27.0 | 26.4 | 25.8 | 25.2 | 24.6 | 24.0 |
| 32 | 37 | 31.5 | 31.0 | 30.5 | 30.0 | 29.5 | 29.0 | 28.4 | 27.9 | 27.3 | 26.8 | 26.2 | 25.6 | 25.0 | 24.4 | 23.8 |
| 33 | 38 | 31.1 | 30.7 | 30.2 | 29.7 | 29.2 | 28.7 | 28.2 | 27.6 | 27.1 | 26.5 | 26.0 | 25.4 | 24.8 | 24.2 | 23.6 |
| 34 | 39 | 30.7 | 30.3 | 29.8 | 29.3 | 28.9 | 28.4 | 27.9 | 27.3 | 26.8 | 26.3 | 25.7 | 25.2 | 24.6 | 24.0 | 23.5 |

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 |
| | | Female 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 |
| 6 | 11 | 25.2 | 24.4 | 23.7 | 22.9 | 22.2 | 21.5 | 20.8 | 20.1 | 19.4 | 18.7 | 18.0 | 17.4 | 16.7 | 16.1 |
| 7 | 12 | 25.1 | 24.4 | 23.6 | 22.9 | 22.2 | 21.5 | 20.8 | 20.1 | 19.4 | 18.7 | 18.0 | 17.4 | 16.7 | 16.1 |
| 8 | 13 | 25.1 | 24.4 | 23.6 | 22.9 | 22.2 | 21.4 | 20.7 | 20.0 | 19.4 | 18.7 | 18.0 | 17.4 | 16.7 | 16.1 |
| 9 | 14 | 25.1 | 24.3 | 23.6 | 22.9 | 22.1 | 21.4 | 20.7 | 20.0 | 19.3 | 18.7 | 18.0 | 17.3 | 16.7 | 16.1 |
| 10 | 15 | 25.0 | 24.3 | 23.6 | 22.8 | 22.1 | 21.4 | 20.7 | 20.0 | 19.3 | 18.6 | 18.0 | 17.3 | 16.7 | 16.1 |
| 11 | 16 | 25.0 | 24.3 | 23.5 | 22.8 | 22.1 | 21.4 | 20.7 | 20.0 | 19.3 | 18.6 | 18.0 | 17.3 | 16.7 | 16.1 |
| 12 | 17 | 25.0 | 24.2 | 23.5 | 22.8 | 22.1 | 21.4 | 20.7 | 20.0 | 19.3 | 18.6 | 18.0 | 17.3 | 16.7 | 16.0 |

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 13 | 18 | 24.9 | 24.2 | 23.5 | 22.7 | 22.0 | 21.3 | 20.6 | 19.9 | 19.3 | 18.6 | 17.9 | 17.3 | 16.7 | 16.0 |
| 14 | 19 | 24.9 | 24.1 | 23.4 | 22.7 | 22.0 | 21.3 | 20.6 | 19.9 | 19.2 | 18.6 | 17.9 | 17.3 | 16.6 | 16.0 |
| 15 | 20 | 24.8 | 24.1 | 23.4 | 22.7 | 22.0 | 21.3 | 20.6 | 19.9 | 19.2 | 18.5 | 17.9 | 17.3 | 16.6 | 16.0 |
| 16 | 21 | 24.8 | 24.0 | 23.3 | 22.6 | 21.9 | 21.2 | 20.5 | 19.9 | 19.2 | 18.5 | 17.9 | 17.2 | 16.6 | 16.0 |
| 17 | 22 | 24.7 | 24.0 | 23.3 | 22.6 | 21.9 | 21.2 | 20.5 | 19.8 | 19.2 | 18.5 | 17.8 | 17.2 | 16.6 | 16.0 |
| 18 | 23 | 24.7 | 23.9 | 23.2 | 22.5 | 21.8 | 21.1 | 20.5 | 19.8 | 19.1 | 18.5 | 17.8 | 17.2 | 16.6 | 15.9 |
| 19 | 24 | 24.6 | 23.9 | 23.2 | 22.5 | 21.8 | 21.1 | 20.4 | 19.8 | 19.1 | 18.4 | 17.8 | 17.2 | 16.5 | 15.9 |
| 20 | 25 | 24.5 | 23.8 | 23.1 | 22.4 | 21.7 | 21.1 | 20.4 | 19.7 | 19.1 | 18.4 | 17.8 | 17.1 | 16.5 | 15.9 |
| 21 | 26 | 24.4 | 23.7 | 23.1 | 22.4 | 21.7 | 21.0 | 20.3 | 19.7 | 19.0 | 18.4 | 17.7 | 17.1 | 16.5 | 15.9 |
| 22 | 27 | 24.4 | 23.7 | 23.0 | 22.3 | 21.6 | 21.0 | 20.3 | 19.6 | 19.0 | 18.3 | 17.7 | 17.1 | 16.5 | 15.9 |
| 23 | 28 | 24.3 | 23.6 | 22.9 | 22.2 | 21.6 | 20.9 | 20.2 | 19.6 | 18.9 | 18.3 | 17.7 | 17.0 | 16.4 | 15.8 |
| 24 | 29 | 24.2 | 23.5 | 22.8 | 22.2 | 21.5 | 20.8 | 20.2 | 19.5 | 18.9 | 18.3 | 17.6 | 17.0 | 16.4 | 15.8 |
| 25 | 30 | 24.1 | 23.4 | 22.8 | 22.1 | 21.4 | 20.8 | 20.1 | 19.5 | 18.8 | 18.2 | 17.6 | 17.0 | 16.4 | 15.8 |
| 26 | 31 | 24.0 | 23.3 | 22.7 | 22.0 | 21.4 | 20.7 | 20.1 | 19.4 | 18.8 | 18.2 | 17.5 | 16.9 | 16.3 | 15.7 |
| 27 | 32 | 23.9 | 23.2 | 22.6 | 21.9 | 21.3 | 20.6 | 20.0 | 19.4 | 18.7 | 18.1 | 17.5 | 16.9 | 16.3 | 15.7 |
| 28 | 33 | 23.8 | 23.1 | 22.5 | 21.8 | 21.2 | 20.6 | 19.9 | 19.3 | 18.7 | 18.1 | 17.4 | 16.8 | 16.2 | 15.6 |
| 29 | 34 | 23.6 | 23.0 | 22.4 | 21.7 | 21.1 | 20.5 | 19.8 | 19.2 | 18.6 | 18.0 | 17.4 | 16.8 | 16.2 | 15.6 |
| 30 | 35 | 23.5 | 22.9 | 22.3 | 21.6 | 21.0 | 20.4 | 19.8 | 19.1 | 18.5 | 17.9 | 17.3 | 16.7 | 16.1 | 15.6 |
| 31 | 36 | 23.4 | 22.7 | 22.1 | 21.5 | 20.9 | 20.3 | 19.7 | 19.1 | 18.5 | 17.9 | 17.3 | 16.7 | 16.1 | 15.5 |
| 32 | 37 | 23.2 | 22.6 | 22.0 | 21.4 | 20.8 | 20.2 | 19.6 | 19.0 | 18.4 | 17.8 | 17.2 | 16.6 | 16.0 | 15.5 |
| 33 | 38 | 23.1 | 22.5 | 21.9 | 21.3 | 20.7 | 20.1 | 19.5 | 18.9 | 18.3 | 17.7 | 17.1 | 16.5 | 16.0 | 15.4 |
| 34 | 39 | 22.9 | 22.3 | 21.7 | 21.1 | 20.5 | 20.0 | 19.4 | 18.8 | 18.2 | 17.6 | 17.0 | 16.5 | 15.9 | 15.3 |

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 |
| | | Female 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 |
| 6 | 11 | 15.5 | 14.9 | 14.3 | 13.7 | 13.1 | 12.6 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.6 | 9.1 | 8.7 | 8.2 |
| 7 | 12 | 15.5 | 14.9 | 14.3 | 13.7 | 13.1 | 12.6 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.6 | 9.1 | 8.7 | 8.2 |
| 8 | 13 | 15.5 | 14.9 | 14.3 | 13.7 | 13.1 | 12.6 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.6 | 9.1 | 8.7 | 8.2 |
| 9 | 14 | 15.5 | 14.9 | 14.3 | 13.7 | 13.1 | 12.6 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.5 | 9.1 | 8.7 | 8.2 |
| 10 | 15 | 15.4 | 14.8 | 14.3 | 13.7 | 13.1 | 12.6 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.5 | 9.1 | 8.7 | 8.2 |
| 11 | 16 | 15.4 | 14.8 | 14.2 | 13.7 | 13.1 | 12.6 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.5 | 9.1 | 8.7 | 8.2 |
| 12 | 17 | 15.4 | 14.8 | 14.2 | 13.7 | 13.1 | 12.5 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.5 | 9.1 | 8.6 | 8.2 |
| 13 | 18 | 15.4 | 14.8 | 14.2 | 13.6 | 13.1 | 12.5 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.5 | 9.1 | 8.6 | 8.2 |
| 14 | 19 | 15.4 | 14.8 | 14.2 | 13.6 | 13.1 | 12.5 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.5 | 9.1 | 8.6 | 8.2 |
| 15 | 20 | 15.4 | 14.8 | 14.2 | 13.6 | 13.1 | 12.5 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.5 | 9.1 | 8.6 | 8.2 |
| 16 | 21 | 15.4 | 14.8 | 14.2 | 13.6 | 13.1 | 12.5 | 12.0 | 11.5 | 11.0 | 10.5 | 10.0 | 9.5 | 9.1 | 8.6 | 8.2 |
| 17 | 22 | 15.4 | 14.8 | 14.2 | 13.6 | 13.0 | 12.5 | 12.0 | 11.5 | 10.9 | 10.5 | 10.0 | 9.5 | 9.1 | 8.6 | 8.2 |
| 18 | 23 | 15.3 | 14.7 | 14.2 | 13.6 | 13.0 | 12.5 | 12.0 | 11.4 | 10.9 | 10.4 | 10.0 | 9.5 | 9.1 | 8.6 | 8.2 |
| 19 | 24 | 15.3 | 14.7 | 14.1 | 13.6 | 13.0 | 12.5 | 12.0 | 11.4 | 10.9 | 10.4 | 10.0 | 9.5 | 9.1 | 8.6 | 8.2 |
| 20 | 25 | 15.3 | 14.7 | 14.1 | 13.6 | 13.0 | 12.5 | 11.9 | 11.4 | 10.9 | 10.4 | 10.0 | 9.5 | 9.0 | 8.6 | 8.2 |

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 |
| | | Female 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 |
| 21 | 26 | 15.3 | 14.7 | 14.1 | 13.5 | 13.0 | 12.5 | 11.9 | 11.4 | 10.9 | 10.4 | 9.9 | 9.5 | 9.0 | 8.6 | 8.2 |
| 22 | 27 | 15.3 | 14.7 | 14.1 | 13.5 | 13.0 | 12.4 | 11.9 | 11.4 | 10.9 | 10.4 | 9.9 | 9.5 | 9.0 | 8.6 | 8.2 |
| 23 | 28 | 15.2 | 14.6 | 14.1 | 13.5 | 13.0 | 12.4 | 11.9 | 11.4 | 10.9 | 10.4 | 9.9 | 9.5 | 9.0 | 8.6 | 8.2 |
| 24 | 29 | 15.2 | 14.6 | 14.0 | 13.5 | 12.9 | 12.4 | 11.9 | 11.4 | 10.9 | 10.4 | 9.9 | 9.5 | 9.0 | 8.6 | 8.2 |
| 25 | 30 | 15.2 | 14.6 | 14.0 | 13.5 | 12.9 | 12.4 | 11.9 | 11.4 | 10.9 | 10.4 | 9.9 | 9.5 | 9.0 | 8.6 | 8.2 |
| 26 | 31 | 15.1 | 14.6 | 14.0 | 13.4 | 12.9 | 12.4 | 11.9 | 11.3 | 10.8 | 10.4 | 9.9 | 9.4 | 9.0 | 8.6 | 8.2 |
| 27 | 32 | 15.1 | 14.5 | 14.0 | 13.4 | 12.9 | 12.4 | 11.8 | 11.3 | 10.8 | 10.4 | 9.9 | 9.4 | 9.0 | 8.6 | 8.2 |
| 28 | 33 | 15.1 | 14.5 | 13.9 | 13.4 | 12.9 | 12.3 | 11.8 | 11.3 | 10.8 | 10.3 | 9.9 | 9.4 | 9.0 | 8.6 | 8.1 |
| 29 | 34 | 15.0 | 14.5 | 13.9 | 13.4 | 12.8 | 12.3 | 11.8 | 11.3 | 10.8 | 10.3 | 9.9 | 9.4 | 9.0 | 8.5 | 8.1 |
| 30 | 35 | 15.0 | 14.4 | 13.9 | 13.3 | 12.8 | 12.3 | 11.8 | 11.3 | 10.8 | 10.3 | 9.8 | 9.4 | 9.0 | 8.5 | 8.1 |
| 31 | 36 | 14.9 | 14.4 | 13.8 | 13.3 | 12.8 | 12.2 | 11.7 | 11.2 | 10.8 | 10.3 | 9.8 | 9.4 | 8.9 | 8.5 | 8.1 |
| 32 | 37 | 14.9 | 14.3 | 13.8 | 13.3 | 12.7 | 12.2 | 11.7 | 11.2 | 10.7 | 10.3 | 9.8 | 9.4 | 8.9 | 8.5 | 8.1 |
| 33 | 38 | 14.8 | 14.3 | 13.8 | 13.2 | 12.7 | 12.2 | 11.7 | 11.2 | 10.7 | 10.2 | 9.8 | 9.3 | 8.9 | 8.5 | 8.1 |
| 34 | 39 | 14.8 | 14.2 | 13.7 | 13.2 | 12.7 | 12.2 | 11.7 | 11.2 | 10.7 | 10.2 | 9.8 | 9.3 | 8.9 | 8.5 | 8.1 |

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 |
| | | Female 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 |
| 6 | 11 | 7.8 | 7.4 | 7.1 | 6.7 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 7 | 12 | 7.8 | 7.4 | 7.1 | 6.7 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 8 | 13 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 9 | 14 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 10 | 15 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 11 | 16 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 12 | 17 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 13 | 18 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.3 | 5.1 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 14 | 19 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 15 | 20 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 16 | 21 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 17 | 22 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 18 | 23 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 19 | 24 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 20 | 25 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.6 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 21 | 26 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.6 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 22 | 27 | 7.8 | 7.4 | 7.0 | 6.7 | 6.3 | 6.0 | 5.6 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 23 | 28 | 7.8 | 7.4 | 7.0 | 6.6 | 6.3 | 6.0 | 5.6 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 24 | 29 | 7.8 | 7.4 | 7.0 | 6.6 | 6.3 | 6.0 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 25 | 30 | 7.8 | 7.4 | 7.0 | 6.6 | 6.3 | 6.0 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 26 | 31 | 7.8 | 7.4 | 7.0 | 6.6 | 6.3 | 6.0 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 27 | 32 | 7.7 | 7.4 | 7.0 | 6.6 | 6.3 | 5.9 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 28 | 33 | 7.7 | 7.4 | 7.0 | 6.6 | 6.3 | 5.9 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 29 | 34 | 7.7 | 7.3 | 7.0 | 6.6 | 6.3 | 5.9 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 30 | 35 | 7.7 | 7.3 | 7.0 | 6.6 | 6.3 | 5.9 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 31 | 36 | 7.7 | 7.3 | 7.0 | 6.6 | 6.3 | 5.9 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 32 | 37 | 7.7 | 7.3 | 7.0 | 6.6 | 6.3 | 5.9 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 4.0 | 3.7 | 3.5 |
| 33 | 38 | 7.7 | 7.3 | 6.9 | 6.6 | 6.2 | 5.9 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 | 3.9 | 3.7 | 3.5 |
| 34 | 39 | 7.7 | 7.3 | 6.9 | 6.6 | 6.2 | 5.9 | 5.6 | 5.3 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 |

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 |
| | | Female 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 |
| 6 | 11 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 7 | 12 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 8 | 13 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 9 | 14 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 10 | 15 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 11 | 16 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 12 | 17 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 13 | 18 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 14 | 19 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 15 | 20 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 16 | 21 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 17 | 22 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 18 | 23 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 19 | 24 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 20 | 25 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 21 | 26 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 22 | 27 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 23 | 28 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 24 | 29 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 25 | 30 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 26 | 31 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 27 | 32 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 28 | 33 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 29 | 34 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 30 | 35 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |

| Male | Female | Ages | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 |
| | | Female 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 |
| 31 | 36 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 32 | 37 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 33 | 38 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 34 | 39 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |

| Male | Female | Ages | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 |
| | | Female 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 |
| 35 | 40 | 30.3 | 29.9 | 29.4 | 29.0 | 28.5 | 28.0 | 27.5 | 27.0 | 26.5 | 26.0 | 25.5 | 24.9 | 24.4 |
| 36 | 41 | 29.9 | 29.5 | 29.0 | 28.6 | 28.2 | 27.7 | 27.2 | 26.7 | 26.2 | 25.7 | 25.2 | 24.7 | 24.2 |
| 37 | 42 | 29.4 | 29.0 | 28.6 | 28.2 | 27.8 | 27.3 | 26.9 | 26.4 | 25.9 | 25.5 | 25.0 | 24.4 | 23.9 |
| 38 | 43 | 29.0 | 28.6 | 28.2 | 27.8 | 27.4 | 27.0 | 26.5 | 26.1 | 25.6 | 25.2 | 24.7 | 24.2 | 23.7 |
| 39 | 44 | 28.5 | 28.2 | 27.8 | 27.4 | 27.0 | 26.6 | 26.2 | 25.8 | 25.3 | 24.8 | 24.4 | 23.9 | 23.4 |
| 40 | 45 | 28.0 | 27.7 | 27.3 | 27.0 | 26.6 | 26.2 | 25.8 | 25.4 | 25.0 | 24.5 | 24.1 | 23.6 | 23.1 |
| 41 | 46 | 27.5 | 27.2 | 26.9 | 26.5 | 26.2 | 25.8 | 25.4 | 25.0 | 24.6 | 24.2 | 23.8 | 23.3 | 22.9 |
| 42 | 47 | 27.0 | 26.7 | 26.4 | 26.1 | 25.8 | 25.4 | 25.0 | 24.6 | 24.2 | 23.8 | 23.4 | 23.0 | 22.6 |
| 43 | 48 | 26.5 | 26.2 | 25.9 | 25.6 | 25.3 | 25.0 | 24.6 | 24.2 | 23.9 | 23.5 | 23.1 | 22.7 | 22.2 |
| 44 | 49 | 26.0 | 25.7 | 25.5 | 25.2 | 24.8 | 24.5 | 24.2 | 23.8 | 23.5 | 23.1 | 22.7 | 22.3 | 21.9 |
| 45 | 50 | 25.5 | 25.2 | 25.0 | 24.7 | 24.4 | 24.1 | 23.8 | 23.4 | 23.1 | 22.7 | 22.4 | 22.0 | 21.6 |
| 46 | 51 | 24.9 | 24.7 | 24.4 | 24.2 | 23.9 | 23.6 | 23.3 | 23.0 | 22.7 | 22.3 | 22.0 | 21.6 | 21.2 |
| 47 | 52 | 24.4 | 24.2 | 23.9 | 23.7 | 23.4 | 23.1 | 22.9 | 22.6 | 22.2 | 21.9 | 21.6 | 21.2 | 20.9 |

| Male | Female | Ages | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 |
| | | Female 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 |
| 35 | 40 | 23.8 | 23.3 | 22.7 | 22.1 | 21.6 | 21.0 | 20.4 | 19.8 | 19.3 | 18.7 | 18.1 | 17.5 | 17.0 |
| 36 | 41 | 23.6 | 23.1 | 22.5 | 22.0 | 21.4 | 20.8 | 20.3 | 19.7 | 19.1 | 18.6 | 18.0 | 17.4 | 16.9 |
| 37 | 42 | 23.4 | 22.9 | 22.3 | 21.8 | 21.2 | 20.7 | 20.1 | 19.6 | 19.0 | 18.4 | 17.9 | 17.3 | 16.8 |
| 38 | 43 | 23.2 | 22.6 | 22.1 | 21.6 | 21.1 | 20.5 | 20.0 | 19.4 | 18.9 | 18.3 | 17.8 | 17.2 | 16.7 |
| 39 | 44 | 22.9 | 22.4 | 21.9 | 21.4 | 20.9 | 20.3 | 19.8 | 19.3 | 18.7 | 18.2 | 17.7 | 17.1 | 16.6 |
| 40 | 45 | 22.7 | 22.2 | 21.7 | 21.2 | 20.7 | 20.1 | 19.6 | 19.1 | 18.6 | 18.0 | 17.5 | 17.0 | 16.5 |
| 41 | 46 | 22.4 | 21.9 | 21.4 | 20.9 | 20.4 | 19.9 | 19.4 | 18.9 | 18.4 | 17.9 | 17.4 | 16.9 | 16.3 |
| 42 | 47 | 22.1 | 21.6 | 21.2 | 20.7 | 20.2 | 19.7 | 19.2 | 18.7 | 18.2 | 17.7 | 17.2 | 16.7 | 16.2 |
| 43 | 48 | 21.8 | 21.4 | 20.9 | 20.5 | 20.0 | 19.5 | 19.0 | 18.6 | 18.1 | 17.6 | 17.1 | 16.6 | 16.1 |
| 44 | 49 | 21.5 | 21.1 | 20.6 | 20.2 | 19.8 | 19.3 | 18.8 | 18.4 | 17.9 | 17.4 | 16.9 | 16.4 | 15.9 |
| 45 | 50 | 21.2 | 20.8 | 20.4 | 19.9 | 19.5 | 19.1 | 18.6 | 18.1 | 17.7 | 17.2 | 16.7 | 16.3 | 15.8 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 46 | 51 | 20.9 | 20.5 | 20.1 | 19.7 | 19.2 | 18.8 | 18.4 | 17.9 | 17.5 | 17.0 | 16.6 | 16.1 | 15.6 |
| 47 | 52 | 20.5 | 20.1 | 19.8 | 19.4 | 19.0 | 18.5 | 18.1 | 17.7 | 17.3 | 16.8 | 16.4 | 15.9 | 15.5 |
| 48 | 53 | 20.2 | 19.8 | 19.4 | 19.1 | 18.7 | 18.3 | 17.9 | 17.5 | 17.0 | 16.6 | 16.2 | 15.7 | 15.3 |
| 49 | 54 | 19.8 | 19.5 | 19.1 | 18.8 | 18.4 | 18.0 | 17.6 | 17.2 | 16.8 | 16.4 | 16.0 | 15.5 | 15.1 |
| 50 | 55 | 19.4 | 19.1 | 18.8 | 18.4 | 18.1 | 17.7 | 17.3 | 16.9 | 16.6 | 16.2 | 15.8 | 15.3 | 14.9 |
| 51 | 56 | 19.1 | 18.8 | 18.4 | 18.1 | 17.8 | 17.4 | 17.0 | 16.7 | 16.3 | 15.9 | 15.5 | 15.1 | 14.7 |
| 52 | 57 | 18.7 | 18.4 | 18.1 | 17.8 | 17.4 | 17.1 | 16.8 | 16.4 | 16.0 | 15.7 | 15.3 | 14.9 | 14.5 |
| 53 | 58 | 18.3 | 18.0 | 17.7 | 17.4 | 17.1 | 16.8 | 16.4 | 16.1 | 15.8 | 15.4 | 15.1 | 14.7 | 14.3 |
| 54 | 59 | 17.9 | 17.6 | 17.3 | 17.0 | 16.8 | 16.4 | 16.1 | 15.8 | 15.5 | 15.1 | 14.8 | 14.4 | 14.1 |
| 55 | 60 | 17.5 | 17.2 | 16.9 | 16.7 | 16.4 | 16.1 | 15.8 | 15.5 | 15.2 | 14.9 | 14.5 | 14.2 | 13.9 |
| 56 | 61 | 17.0 | 16.8 | 16.6 | 16.3 | 16.0 | 15.8 | 15.5 | 15.2 | 14.9 | 14.6 | 14.3 | 13.9 | 13.6 |
| 57 | 62 | 16.6 | 16.4 | 16.2 | 15.9 | 15.7 | 15.4 | 15.1 | 14.9 | 14.6 | 14.3 | 14.0 | 13.7 | 13.4 |
| 58 | 63 | 16.2 | 16.0 | 15.8 | 15.5 | 15.3 | 15.1 | 14.8 | 14.5 | 14.3 | 14.0 | 13.7 | 13.4 | 13.1 |
| 59 | 64 | 15.7 | 15.5 | 15.3 | 15.1 | 14.9 | 14.7 | 14.4 | 14.2 | 13.9 | 13.7 | 13.4 | 13.1 | 12.8 |
| 60 | 65 | 15.3 | 15.1 | 14.9 | 14.7 | 14.5 | 14.3 | 14.1 | 13.9 | 13.6 | 13.4 | 13.1 | 12.8 | 12.6 |

| Male | Female | Ages | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 |
| | | Female 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 74 | 76 | 77 | 78 |
| 35 | 40 | 16.4 | 15.8 | 15.3 | 14.7 | 14.2 | 13.7 | 13.1 | 12.6 | 12.1 | 11.6 | 11.1 | 10.7 | 10.2 |
| 36 | 41 | 16.3 | 15.8 | 15.2 | 14.7 | 14.1 | 13.6 | 13.1 | 12.6 | 12.1 | 11.6 | 11.1 | 10.6 | 10.2 |
| 37 | 42 | 16.2 | 15.7 | 15.1 | 14.6 | 14.1 | 13.6 | 13.0 | 12.5 | 12.0 | 11.5 | 11.1 | 10.6 | 10.1 |
| 38 | 43 | 16.1 | 15.6 | 15.1 | 14.5 | 14.0 | 13.5 | 13.0 | 12.5 | 12.0 | 11.5 | 11.0 | 10.6 | 10.1 |
| 39 | 44 | 16.0 | 15.5 | 15.0 | 14.5 | 13.9 | 13.4 | 12.9 | 12.4 | 11.9 | 11.5 | 11.0 | 10.5 | 10.1 |
| 40 | 45 | 15.9 | 15.4 | 14.9 | 14.4 | 13.9 | 13.4 | 12.9 | 12.4 | 11.9 | 11.4 | 11.0 | 10.5 | 10.0 |
| 41 | 46 | 15.8 | 15.3 | 14.8 | 14.3 | 13.8 | 13.3 | 12.8 | 12.3 | 11.8 | 11.4 | 10.9 | 10.5 | 10.0 |
| 42 | 47 | 15.7 | 15.2 | 14.7 | 14.2 | 13.7 | 13.2 | 12.7 | 12.3 | 11.8 | 11.3 | 10.9 | 10.4 | 10.0 |
| 43 | 48 | 15.6 | 15.1 | 14.6 | 14.1 | 13.6 | 13.1 | 12.7 | 12.2 | 11.7 | 11.3 | 10.8 | 10.4 | 9.9 |
| 44 | 49 | 15.5 | 15.0 | 14.5 | 14.0 | 13.5 | 13.1 | 12.6 | 12.1 | 11.7 | 11.2 | 10.8 | 10.3 | 9.9 |
| 45 | 50 | 15.3 | 14.8 | 14.4 | 13.9 | 13.4 | 13.0 | 12.5 | 12.0 | 11.6 | 11.1 | 10.7 | 10.3 | 9.8 |
| 46 | 51 | 15.2 | 14.7 | 14.2 | 13.8 | 13.3 | 12.9 | 12.4 | 12.0 | 11.5 | 11.1 | 10.6 | 10.2 | 9.8 |
| 47 | 52 | 15.0 | 14.6 | 14.1 | 13.7 | 13.2 | 12.8 | 12.3 | 11.9 | 11.4 | 11.0 | 10.6 | 10.1 | 9.7 |
| 48 | 53 | 14.9 | 14.4 | 14.0 | 13.5 | 13.1 | 12.6 | 12.2 | 11.8 | 11.3 | 10.9 | 10.5 | 10.1 | 9.7 |
| 49 | 54 | 14.7 | 14.3 | 13.8 | 13.4 | 13.0 | 12.5 | 12.1 | 11.7 | 11.3 | 10.8 | 10.4 | 10.0 | 9.6 |
| 50 | 55 | 14.5 | 14.1 | 13.7 | 13.3 | 12.8 | 12.4 | 12.0 | 11.6 | 11.2 | 10.7 | 10.3 | 9.9 | 9.5 |
| 51 | 56 | 14.3 | 13.9 | 13.5 | 13.1 | 12.7 | 12.3 | 11.9 | 11.5 | 11.1 | 10.7 | 10.3 | 9.9 | 9.5 |
| 52 | 57 | 14.1 | 13.7 | 13.3 | 12.9 | 12.5 | 12.1 | 11.7 | 11.3 | 10.9 | 10.6 | 10.2 | 9.8 | 9.4 |
| 53 | 58 | 13.9 | 13.6 | 13.2 | 12.8 | 12.4 | 12.0 | 11.6 | 11.2 | 10.8 | 10.5 | 10.1 | 9.7 | 9.3 |
| 54 | 59 | 13.7 | 13.4 | 13.0 | 12.6 | 12.2 | 11.9 | 11.5 | 11.1 | 10.7 | 10.3 | 10.0 | 9.6 | 9.2 |
| 55 | 60 | 13.5 | 13.2 | 12.8 | 12.4 | 12.1 | 11.7 | 11.3 | 11.0 | 10.6 | 10.2 | 9.9 | 9.5 | 9.1 |

| Male | Female | Ages | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 |
| | | Female 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 74 | 76 | 77 | 78 |
| 56 | 61 | 13.3 | 12.9 | 12.6 | 12.2 | 11.9 | 11.5 | 11.2 | 10.8 | 10.5 | 10.1 | 9.8 | 9.4 | 9.0 |
| 57 | 62 | 13.0 | 12.7 | 12.4 | 12.1 | 11.7 | 11.4 | 11.0 | 10.7 | 10.3 | 10.0 | 9.6 | 9.3 | 8.9 |
| 58 | 63 | 12.8 | 12.5 | 12.2 | 11.8 | 11.5 | 11.2 | 10.9 | 10.5 | 10.2 | 9.8 | 9.5 | 9.2 | 8.8 |
| 59 | 64 | 12.6 | 12.3 | 11.9 | 11.6 | 11.3 | 11.0 | 10.7 | 10.4 | 10.0 | 9.7 | 9.4 | 9.1 | 8.7 |
| 60 | 65 | 12.3 | 12.0 | 11.7 | 11.4 | 11.1 | 10.8 | 10.5 | 10.2 | 9.9 | 9.6 | 9.3 | 8.9 | 8.6 |
| 61 | 66 | 12.0 | 11.8 | 11.5 | 11.2 | 10.9 | 10.6 | 10.3 | 10.0 | 9.7 | 9.4 | 9.1 | 8.8 | 8.5 |
| 62 | 67 | 11.8 | 11.5 | 11.2 | 11.0 | 10.7 | 10.4 | 10.1 | 9.8 | 9.6 | 9.3 | 9.0 | 8.7 | 8.4 |
| 63 | 68 | 11.5 | 11.2 | 11.0 | 10.7 | 10.5 | 10.2 | 9.9 | 9.7 | 9.4 | 9.1 | 8.8 | 8.5 | 8.2 |
| 64 | 69 | 11.2 | 11.0 | 10.7 | 10.5 | 10.2 | 10.0 | 9.7 | 9.5 | 9.2 | 8.9 | 8.7 | 8.4 | 8.1 |
| 65 | 70 | 10.9 | 10.7 | 10.5 | 10.2 | 10.0 | 9.8 | 9.5 | 9.3 | 9.0 | 8.8 | 8.5 | 8.2 | 8.0 |
| 66 | 71 | 10.6 | 10.4 | 10.2 | 10.0 | 9.8 | 9.5 | 9.3 | 9.1 | 8.8 | 8.6 | 8.3 | 8.1 | 7.8 |
| 67 | 72 | 10.3 | 10.1 | 9.9 | 9.7 | 9.5 | 9.3 | 9.1 | 8.9 | 8.6 | 8.4 | 8.1 | 7.9 | 7.7 |
| 68 | 73 | 10.0 | 9.8 | 9.7 | 9.5 | 9.3 | 9.1 | 8.9 | 8.6 | 8.4 | 8.2 | 8.0 | 7.7 | 7.5 |
| 69 | 74 | 9.7 | 9.6 | 9.4 | 9.2 | 9.0 | 8.8 | 8.6 | 8.4 | 8.2 | 8.0 | 7.8 | 7.6 | 7.3 |
| 70 | 75 | 9.4 | 9.3 | 9.1 | 8.9 | 8.8 | 8.6 | 8.4 | 8.2 | 8.0 | 7.8 | 7.6 | 7.4 | 7.2 |
| 71 | 76 | 9.1 | 9.0 | 8.8 | 8.7 | 8.5 | 8.3 | 8.1 | 8.0 | 7.8 | 7.6 | 7.4 | 7.2 | 7.0 |
| 72 | 77 | 8.8 | 8.7 | 8.5 | 8.4 | 8.2 | 8.1 | 7.9 | 7.7 | 7.6 | 7.4 | 7.2 | 7.0 | 6.8 |
| 73 | 78 | 8.5 | 8.4 | 8.2 | 8.1 | 8.0 | 7.8 | 7.7 | 7.5 | 7.3 | 7.2 | 7.0 | 6.8 | 6.7 |

| Male | Female | Ages | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 |
| | | Female 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 |
| 35 | 40 | 9.7 | 9.3 | 8.9 | 8.5 | 8.1 | 7.7 | 7.3 | 6.9 | 6.6 | 6.2 | 5.9 | 5.6 | 5.3 |
| 36 | 41 | 9.7 | 9.3 | 8.9 | 8.4 | 8.0 | 7.7 | 7.3 | 6.9 | 6.6 | 6.2 | 5.9 | 5.6 | 5.3 |
| 37 | 42 | 9.7 | 9.3 | 8.8 | 8.4 | 8.0 | 7.6 | 7.3 | 6.9 | 6.5 | 6.2 | 5.9 | 5.6 | 5.3 |
| 38 | 43 | 9.7 | 9.2 | 8.8 | 8.4 | 8.0 | 7.6 | 7.2 | 6.9 | 6.5 | 6.2 | 5.9 | 5.6 | 5.3 |
| 39 | 44 | 9.6 | 9.2 | 8.8 | 8.4 | 8.0 | 7.6 | 7.2 | 6.9 | 6.5 | 6.2 | 5.9 | 5.6 | 5.3 |
| 40 | 45 | 9.6 | 9.2 | 8.8 | 8.4 | 8.0 | 7.6 | 7.2 | 6.9 | 6.5 | 6.2 | 5.9 | 5.5 | 5.2 |
| 41 | 46 | 9.6 | 9.2 | 8.7 | 8.3 | 7.9 | 7.6 | 7.2 | 6.8 | 6.5 | 6.2 | 5.8 | 5.5 | 5.2 |
| 42 | 47 | 9.5 | 9.1 | 8.7 | 8.3 | 7.9 | 7.5 | 7.2 | 6.8 | 6.5 | 6.2 | 5.8 | 5.5 | 5.2 |
| 43 | 48 | 9.5 | 9.1 | 8.7 | 8.3 | 7.9 | 7.5 | 7.2 | 6.8 | 6.5 | 6.1 | 5.8 | 5.5 | 5.2 |
| 44 | 49 | 9.5 | 9.0 | 8.6 | 8.2 | 7.9 | 7.5 | 7.1 | 6.8 | 6.4 | 6.1 | 5.8 | 5.5 | 5.2 |
| 45 | 50 | 9.4 | 9.0 | 8.6 | 8.2 | 7.8 | 7.5 | 7.1 | 6.8 | 6.4 | 6.1 | 5.8 | 5.5 | 5.2 |
| 46 | 51 | 9.4 | 9.0 | 8.6 | 8.2 | 7.8 | 7.4 | 7.1 | 6.7 | 6.4 | 6.1 | 5.8 | 5.5 | 5.2 |
| 47 | 52 | 9.3 | 8.9 | 8.5 | 8.1 | 7.8 | 7.4 | 7.1 | 6.7 | 6.4 | 6.1 | 5.8 | 5.5 | 5.2 |
| 48 | 53 | 9.3 | 8.9 | 8.5 | 8.1 | 7.7 | 7.4 | 7.0 | 6.7 | 6.4 | 6.0 | 5.7 | 5.4 | 5.1 |
| 49 | 54 | 9.2 | 8.8 | 8.4 | 8.1 | 7.7 | 7.3 | 7.0 | 6.7 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 |
| 50 | 55 | 9.1 | 8.8 | 8.4 | 8.0 | 7.7 | 7.3 | 7.0 | 6.6 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 51 | 56 | 9.1 | 8.7 | 8.3 | 8.0 | 7.6 | 7.3 | 6.9 | 6.6 | 6.3 | 6.0 | 5.7 | 5.4 | 5.1 |
| 52 | 57 | 9.0 | 8.6 | 8.3 | 7.9 | 7.6 | 7.2 | 6.9 | 6.6 | 6.2 | 5.9 | 5.6 | 5.4 | 5.1 |
| 53 | 58 | 8.9 | 8.6 | 8.2 | 7.9 | 7.5 | 7.2 | 6.9 | 6.5 | 6.2 | 5.9 | 5.6 | 5.3 | 5.1 |
| 54 | 59 | 8.9 | 8.5 | 8.2 | 7.8 | 7.5 | 7.1 | 6.8 | 6.5 | 6.2 | 5.9 | 5.6 | 5.3 | 5.0 |
| 55 | 60 | 8.8 | 8.4 | 8.1 | 7.7 | 7.4 | 7.1 | 6.8 | 6.4 | 6.1 | 5.8 | 5.6 | 5.3 | 5.0 |
| 56 | 61 | 8.7 | 8.4 | 8.0 | 7.7 | 7.3 | 7.0 | 6.7 | 6.4 | 6.1 | 5.8 | 5.5 | 5.3 | 5.0 |
| 57 | 62 | 8.6 | 8.3 | 7.9 | 7.6 | 7.3 | 7.0 | 6.7 | 6.4 | 6.1 | 5.8 | 5.5 | 5.2 | 5.0 |
| 58 | 63 | 8.5 | 8.2 | 7.9 | 7.5 | 7.2 | 6.9 | 6.6 | 6.3 | 6.0 | 5.7 | 5.5 | 5.2 | 4.9 |
| 59 | 64 | 8.4 | 8.1 | 7.8 | 7.5 | 7.1 | 6.8 | 6.5 | 6.3 | 6.0 | 5.7 | 5.4 | 5.2 | 4.9 |
| 60 | 65 | 8.3 | 8.0 | 7.7 | 7.4 | 7.1 | 6.8 | 6.5 | 6.2 | 5.9 | 5.6 | 5.4 | 5.1 | 4.9 |
| 61 | 66 | 8.2 | 7.9 | 7.6 | 7.3 | 7.0 | 6.7 | 6.4 | 6.1 | 5.9 | 5.6 | 5.3 | 5.1 | 4.8 |
| 62 | 67 | 8.1 | 7.8 | 7.5 | 7.2 | 6.9 | 6.6 | 6.4 | 6.1 | 5.8 | 5.5 | 5.3 | 5.0 | 4.8 |
| 63 | 68 | 8.0 | 7.7 | 7.4 | 7.1 | 6.8 | 6.6 | 6.3 | 6.0 | 5.7 | 5.5 | 5.2 | 5.0 | 4.7 |
| 64 | 69 | 7.8 | 7.6 | 7.3 | 7.0 | 6.7 | 6.5 | 6.2 | 5.9 | 5.7 | 5.4 | 5.2 | 4.9 | 4.7 |
| 65 | 70 | 7.7 | 7.4 | 7.2 | 6.9 | 6.6 | 6.4 | 6.1 | 5.9 | 5.6 | 5.4 | 5.1 | 4.9 | 4.7 |
| 66 | 71 | 7.6 | 7.3 | 7.1 | 6.8 | 6.5 | 6.3 | 6.0 | 5.8 | 5.5 | 5.3 | 5.1 | 4.8 | 4.6 |
| 67 | 72 | 7.4 | 7.2 | 6.9 | 6.7 | 6.4 | 6.2 | 6.0 | 5.7 | 5.5 | 5.2 | 5.0 | 4.8 | 4.6 |
| 68 | 73 | 7.3 | 7.0 | 6.8 | 6.6 | 6.3 | 6.1 | 5.9 | 5.6 | 5.4 | 5.2 | 4.9 | 4.7 | 4.5 |
| 69 | 74 | 7.1 | 6.9 | 6.7 | 6.4 | 6.2 | 6.0 | 5.8 | 5.5 | 5.3 | 5.1 | 4.9 | 4.7 | 4.5 |
| 70 | 75 | 7.0 | 6.8 | 6.5 | 6.3 | 6.1 | 5.9 | 5.7 | 5.4 | 5.2 | 5.0 | 4.8 | 4.6 | 4.4 |
| 71 | 76 | 6.8 | 6.6 | 6.4 | 6.2 | 6.0 | 5.8 | 5.6 | 5.3 | 5.1 | 4.9 | 4.7 | 4.5 | 4.3 |
| 72 | 77 | 6.6 | 6.4 | 6.3 | 6.1 | 5.9 | 5.7 | 5.5 | 5.3 | 5.0 | 4.9 | 4.7 | 4.5 | 4.3 |
| 73 | 78 | 6.5 | 6.3 | 6.1 | 5.9 | 5.7 | 5.5 | 5.3 | 5.1 | 5.0 | 4.8 | 4.6 | 4.4 | 4.2 |
| 74 | 79 | 6.3 | 6.1 | 6.0 | 5.8 | 5.6 | 5.4 | 5.2 | 5.0 | 4.9 | 4.7 | 4.5 | 4.3 | 4.1 |
| 75 | 80 | 6.1 | 6.0 | 5.8 | 5.6 | 5.5 | 5.3 | 5.1 | 4.9 | 4.8 | 4.6 | 4.4 | 4.2 | 4.1 |
| 76 | 81 | 6.0 | 5.8 | 5.6 | 5.5 | 5.3 | 5.2 | 5.0 | 4.8 | 4.7 | 4.5 | 4.3 | 4.1 | 4.0 |
| 77 | 82 | 5.8 | 5.6 | 5.5 | 5.3 | 5.2 | 5.0 | 4.9 | 4.7 | 4.5 | 4.4 | 4.2 | 4.1 | 3.9 |
| 78 | 83 | 5.6 | 5.5 | 5.3 | 5.2 | 5.0 | 4.9 | 4.7 | 4.6 | 4.4 | 4.3 | 4.1 | 4.0 | 3.8 |
| 79 | 84 | 5.4 | 5.3 | 5.2 | 5.0 | 4.9 | 4.7 | 4.6 | 4.5 | 4.3 | 4.2 | 4.0 | 3.9 | 3.7 |
| 80 | 85 | 5.2 | 5.1 | 5.0 | 4.9 | 4.7 | 4.6 | 4.5 | 4.3 | 4.2 | 4.1 | 3.9 | 3.8 | 3.6 |
| 81 | 86 | 5.0 | 4.9 | 4.8 | 4.7 | 4.6 | 4.5 | 4.3 | 4.2 | 4.1 | 3.9 | 3.8 | 3.7 | 3.6 |
| 82 | 87 | 4.9 | 4.8 | 4.7 | 4.5 | 4.4 | 4.3 | 4.2 | 4.1 | 4.0 | 3.8 | 3.7 | 3.6 | 3.5 |
| 83 | 88 | 4.7 | 4.6 | 4.5 | 4.4 | 4.3 | 4.2 | 4.1 | 3.9 | 3.8 | 3.7 | 3.6 | 3.5 | 3.4 |
| 84 | 89 | 4.5 | 4.4 | 4.3 | 4.2 | 4.1 | 4.0 | 3.9 | 3.8 | 3.7 | 3.6 | 3.5 | 3.4 | 3.3 |
| 85 | 90 | 4.3 | 4.2 | 4.1 | 4.1 | 4.0 | 3.9 | 3.8 | 3.7 | 3.6 | 3.5 | 3.4 | 3.3 | 3.2 |
| 86 | 91 | 4.1 | 4.1 | 4.0 | 3.9 | 3.8 | 3.7 | 3.6 | 3.6 | 3.5 | 3.4 | 3.3 | 3.2 | 3.1 |

| Male | Female | Ages | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 |
| | | Female 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 |
| 35 | 40 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 |

| Male | Female | Ages | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 |
| | | Female 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 |
| 36 | 41 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 |
| 37 | 42 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 |
| 38 | 43 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 2.8 | 2.6 |
| 39 | 44 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 | 3.3 | 3.0 | 2.8 | 2.6 |
| 40 | 45 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 | 3.3 | 3.0 | 2.8 | 2.6 |
| 41 | 46 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 | 3.2 | 3.0 | 2.8 | 2.6 |
| 42 | 47 | 4.9 | 4.7 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 | 3.2 | 3.0 | 2.8 | 2.6 |
| 43 | 48 | 4.9 | 4.7 | 4.4 | 4.1 | 3.9 | 3.7 | 3.5 | 3.2 | 3.0 | 2.8 | 2.6 |
| 44 | 49 | 4.9 | 4.7 | 4.4 | 4.1 | 3.9 | 3.7 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 45 | 50 | 4.9 | 4.6 | 4.4 | 4.1 | 3.9 | 3.7 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 46 | 51 | 4.9 | 4.6 | 4.4 | 4.1 | 3.9 | 3.7 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 47 | 52 | 4.9 | 4.6 | 4.4 | 4.1 | 3.9 | 3.7 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 48 | 53 | 4.9 | 4.6 | 4.4 | 4.1 | 3.9 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 49 | 54 | 4.9 | 4.6 | 4.3 | 4.1 | 3.9 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 50 | 55 | 4.8 | 4.6 | 4.3 | 4.1 | 3.9 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 51 | 56 | 4.8 | 4.6 | 4.3 | 4.1 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 52 | 57 | 4.8 | 4.5 | 4.3 | 4.1 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 53 | 58 | 4.8 | 4.5 | 4.3 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 54 | 59 | 4.8 | 4.5 | 4.3 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 55 | 60 | 4.7 | 4.5 | 4.3 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 |
| 56 | 61 | 4.7 | 4.5 | 4.2 | 4.0 | 3.8 | 3.6 | 3.3 | 3.1 | 2.9 | 2.8 | 2.6 |
| 57 | 62 | 4.7 | 4.5 | 4.2 | 4.0 | 3.8 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 | 2.6 |
| 58 | 63 | 4.7 | 4.4 | 4.2 | 4.0 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 |
| 59 | 64 | 4.6 | 4.4 | 4.2 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 |

| Male | Female | Ages | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 |
| | | Female 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 |
| 35 | 40 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 36 | 41 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.8 | 0.7 |
| 37 | 42 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 38 | 43 | 2.5 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 39 | 44 | 2.4 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 40 | 45 | 2.4 | 2.2 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 41 | 46 | 2.4 | 2.2 | 2.1 | 1.9 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 42 | 47 | 2.4 | 2.2 | 2.0 | 1.9 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 43 | 48 | 2.4 | 2.2 | 2.0 | 1.9 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 44 | 49 | 2.4 | 2.2 | 2.0 | 1.9 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 45 | 50 | 2.4 | 2.2 | 2.0 | 1.8 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 46 | 51 | 2.4 | 2.2 | 2.0 | 1.8 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 47 | 52 | 2.4 | 2.2 | 2.0 | 1.8 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 48 | 53 | 2.4 | 2.2 | 2.0 | 1.8 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 49 | 54 | 2.4 | 2.2 | 2.0 | 1.8 | 1.7 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 50 | 55 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 51 | 56 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 52 | 57 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 53 | 58 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 54 | 59 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 55 | 60 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.4 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 56 | 61 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.4 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 |
| 57 | 62 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.4 | 1.3 | 1.1 | 0.9 | 0.8 | 0.7 |
| 58 | 63 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.4 | 1.3 | 1.1 | 0.9 | 0.8 | 0.7 |
| 59 | 64 | 2.3 | 2.2 | 2.0 | 1.8 | 1.6 | 1.4 | 1.3 | 1.1 | 0.9 | 0.8 | 0.7 |

| Male | Female | Ages | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 |
| | | Female 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 |
| 60 | 65 | 4.6 | 4.4 | 4.1 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 |
| 61 | 66 | 4.6 | 4.3 | 4.1 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 |
| 62 | 67 | 4.5 | 4.3 | 4.1 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 |
| 63 | 68 | 4.5 | 4.3 | 4.1 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.9 | 2.7 | 2.5 |
| 64 | 69 | 4.5 | 4.2 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.7 | 2.5 |
| 65 | 70 | 4.4 | 4.2 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 | 2.5 |
| 66 | 71 | 4.4 | 4.2 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 | 2.4 |
| 67 | 72 | 4.3 | 4.1 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 3.0 | 2.8 | 2.6 | 2.4 |
| 68 | 73 | 4.3 | 4.1 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.8 | 2.6 | 2.4 |
| 69 | 74 | 4.2 | 4.0 | 3.8 | 3.6 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 | 2.6 | 2.4 |
| 70 | 75 | 4.2 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.1 | 2.9 | 2.7 | 2.5 | 2.4 |
| 71 | 76 | 4.1 | 3.9 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.9 | 2.7 | 2.5 | 2.3 |
| 72 | 77 | 4.1 | 3.9 | 3.7 | 3.5 | 3.3 | 3.2 | 3.0 | 2.8 | 2.7 | 2.5 | 2.3 |
| 73 | 78 | 4.0 | 3.8 | 3.7 | 3.5 | 3.3 | 3.1 | 3.0 | 2.8 | 2.6 | 2.5 | 2.3 |
| 74 | 79 | 3.9 | 3.8 | 3.6 | 3.4 | 3.3 | 3.1 | 2.9 | 2.8 | 2.6 | 2.4 | 2.3 |
| 75 | 80 | 3.9 | 3.7 | 3.5 | 3.4 | 3.2 | 3.0 | 2.9 | 2.7 | 2.6 | 2.4 | 2.2 |
| 76 | 81 | 3.8 | 3.6 | 3.5 | 3.3 | 3.2 | 3.0 | 2.8 | 2.7 | 2.5 | 2.4 | 2.2 |
| 77 | 82 | 3.7 | 3.6 | 3.4 | 3.3 | 3.1 | 3.0 | 2.8 | 2.6 | 2.5 | 2.3 | 2.2 |
| 78 | 83 | 3.7 | 3.5 | 3.4 | 3.2 | 3.1 | 2.9 | 2.7 | 2.6 | 2.4 | 2.3 | 2.1 |
| 79 | 84 | 3.6 | 3.4 | 3.3 | 3.1 | 3.0 | 2.8 | 2.7 | 2.5 | 2.4 | 2.2 | 2.1 |

| Male | Female | Ages | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 |
| | | Female 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 |
| 80 | 85 | 3.5 | 3.4 | 3.2 | 3.1 | 2.9 | 2.8 | 2.6 | 2.5 | 2.3 | 2.2 | 2.0 |
| 81 | 86 | 3.4 | 3.3 | 3.1 | 3.0 | 2.9 | 2.7 | 2.6 | 2.4 | 2.3 | 2.1 | 2.0 |
| 82 | 87 | 3.3 | 3.2 | 3.1 | 2.9 | 2.8 | 2.7 | 2.5 | 2.4 | 2.2 | 2.1 | 2.0 |
| 83 | 88 | 3.2 | 3.1 | 3.0 | 2.9 | 2.7 | 2.6 | 2.5 | 2.3 | 2.2 | 2.0 | 1.9 |
| 84 | 89 | 3.1 | 3.0 | 2.9 | 2.8 | 2.7 | 2.5 | 2.4 | 2.3 | 2.1 | 2.0 | 1.9 |

| Male | Female | Ages | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 |
| | | Female 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 |
| 60 | 65 | 2.3 | 2.1 | 2.0 | 1.8 | 1.6 | 1.4 | 1.3 | 1.1 | 0.9 | 0.8 | 0.7 |
| 61 | 66 | 2.3 | 2.1 | 2.0 | 1.8 | 1.6 | 1.4 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 |
| 62 | 67 | 2.3 | 2.1 | 1.9 | 1.8 | 1.6 | 1.4 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 |
| 63 | 68 | 2.3 | 2.1 | 1.9 | 1.7 | 1.6 | 1.4 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 |
| 64 | 69 | 2.3 | 2.1 | 1.9 | 1.7 | 1.6 | 1.4 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 |
| 65 | 70 | 2.3 | 2.1 | 1.9 | 1.7 | 1.6 | 1.4 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 |
| 66 | 71 | 2.3 | 2.1 | 1.9 | 1.7 | 1.5 | 1.4 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 |
| 67 | 72 | 2.2 | 2.1 | 1.9 | 1.7 | 1.5 | 1.4 | 1.2 | 1.0 | 0.9 | 0.7 | 0.7 |
| 68 | 73 | 2.2 | 2.0 | 1.9 | 1.7 | 1.5 | 1.4 | 1.2 | 1.0 | 0.9 | 0.7 | 0.7 |
| 69 | 74 | 2.2 | 2.0 | 1.8 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.9 | 0.7 | 0.6 |
| 70 | 75 | 2.2 | 2.0 | 1.8 | 1.7 | 1.5 | 1.3 | 1.2 | 1.0 | 0.9 | 0.7 | 0.6 |
| 71 | 76 | 2.2 | 2.0 | 1.8 | 1.6 | 1.5 | 1.3 | 1.2 | 1.0 | 0.9 | 0.7 | 0.6 |
| 72 | 77 | 2.1 | 2.0 | 1.8 | 1.6 | 1.5 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 | 0.6 |
| 73 | 78 | 2.1 | 1.9 | 1.8 | 1.6 | 1.4 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 | 0.6 |
| 74 | 79 | 2.1 | 1.9 | 1.7 | 1.6 | 1.4 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 | 0.6 |
| 75 | 80 | 2.1 | 1.9 | 1.7 | 1.6 | 1.4 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 | |
| 76 | 81 | 2.0 | 1.9 | 1.7 | 1.5 | 1.4 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 | |
| 77 | 82 | 2.0 | 1.8 | 1.7 | 1.5 | 1.4 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 | |
| 78 | 83 | 2.0 | 1.8 | 1.6 | 1.5 | 1.3 | 1.2 | 1.0 | 0.9 | 0.8 | 0.7 | |
| 79 | 84 | 1.9 | 1.8 | 1.6 | 1.5 | 1.3 | 1.2 | 1.0 | 0.9 | 0.8 | 0.7 | |
| 80 | 85 | 1.9 | 1.7 | 1.6 | 1.4 | 1.3 | 1.1 | 1.0 | 0.9 | 0.7 | 0.7 | |
| 81 | 86 | 1.8 | 1.7 | 1.5 | 1.4 | 1.3 | 1.1 | 1.0 | 0.8 | 0.7 | 0.6 | |
| 82 | 87 | 1.8 | 1.7 | 1.5 | 1.4 | 1.2 | 1.1 | 1.0 | 0.8 | 0.7 | 0.6 | |
| 83 | 88 | 1.8 | 1.6 | 1.5 | 1.3 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 | 0.6 | |
| 84 | 89 | 1.7 | 1.6 | 1.4 | 1.3 | 1.2 | 1.0 | 0.9 | 0.8 | 0.7 | ............ | ............ |

| Male | Female | Ages | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 |
| | | Female 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 |
| 85 | 90 | 3.1 | 2.9 | 2.8 | 2.7 | 2.6 | 2.5 | 2.3 | 2.2 | 2.1 | 1.9 |
| 86 | 91 | 3.0 | 2.8 | 2.7 | 2.6 | 2.5 | 2.4 | 2.3 | 2.1 | 2.0 | 1.9 |
| 87 | 92 | 2.9 | 2.8 | 2.6 | 2.5 | 2.4 | 2.3 | 2.2 | 2.1 | 1.9 | 1.8 |
| 88 | 93 | 2.8 | 2.7 | 2.6 | 2.4 | 2.3 | 2.2 | 2.1 | 2.0 | 1.9 | 1.7 |
| 89 | 94 | 2.6 | 2.6 | 2.5 | 2.4 | 2.2 | 2.1 | 2.0 | 1.9 | 1.8 | 1.7 |
| 90 | 95 | 2.5 | 2.4 | 2.4 | 2.3 | 2.2 | 2.0 | 1.9 | 1.8 | 1.7 | 1.6 |
| 91 | 96 | 2.4 | 2.3 | 2.2 | 2.2 | 2.1 | 2.0 | 1.9 | 1.7 | 1.6 | 1.5 |
| 92 | 97 | 2.3 | 2.2 | 2.1 | 2.0 | 2.0 | 1.9 | 1.8 | 1.7 | 1.6 | 1.5 |
| 93 | 98 | 2.2 | 2.1 | 2.0 | 1.9 | 1.9 | 1.8 | 1.7 | 1.6 | 1.5 | 1.4 |
| 94 | 99 | 2.1 | 2.0 | 1.9 | 1.8 | 1.7 | 1.7 | 1.6 | 1.5 | 1.4 | 1.3 |
| 95 | 100 | 1.9 | 1.9 | 1.8 | 1.7 | 1.6 | 1.6 | 1.5 | 1.4 | 1.3 | 1.2 |
| 96 | 101 | 1.8 | 1.7 | 1.7 | 1.6 | 1.5 | 1.5 | 1.4 | 1.3 | 1.2 | 1.1 |
| 97 | 102 | 1.7 | 1.6 | 1.6 | 1.5 | 1.4 | 1.4 | 1.3 | 1.2 | 1.1 | 1.1 |
| 98 | 103 | 1.6 | 1.5 | 1.4 | 1.4 | 1.3 | 1.3 | 1.2 | 1.1 | 1.0 | 1.0 |
| 99 | 104 | 1.4 | 1.4 | 1.3 | 1.3 | 1.2 | 1.1 | 1.1 | 1.0 | 1.0 | 0.9 |

| Male | Female | Ages | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 |
| | | Female 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 |
| 85 | 90 | 1.8 | 1.7 | 1.5 | 1.4 | 1.3 | 1.1 | 1.0 | 0.9 | 0.8 | 0.7 |
| 86 | 91 | 1.7 | 1.6 | 1.5 | 1.3 | 1.2 | 1.1 | 1.0 | 0.8 | 0.7 | 0.7 |
| 87 | 92 | 1.7 | 1.6 | 1.4 | 1.3 | 1.2 | 1.1 | 0.9 | 0.8 | 0.7 | 0.6 |
| 88 | 93 | 1.6 | 1.5 | 1.4 | 1.3 | 1.1 | 1.0 | 0.9 | 0.8 | 0.7 | 0.6 |
| 89 | 94 | 1.6 | 1.4 | 1.3 | 1.2 | 1.1 | 1.0 | 0.9 | 0.7 | 0.7 | |
| 90 | 95 | 1.5 | 1.4 | 1.3 | 1.2 | 1.0 | 0.9 | 0.8 | 0.7 | 0.6 | |
| 91 | 96 | 1.4 | 1.3 | 1.2 | 1.1 | 1.0 | 0.9 | 0.8 | 0.7 | 0.6 | |
| 92 | 97 | 1.4 | 1.3 | 1.1 | 1.0 | 0.9 | 0.8 | 0.7 | 0.7 | | |
| 93 | 98 | 1.3 | 1.2 | 1.1 | 1.0 | 0.9 | 0.8 | 0.7 | 0.6 | | |
| 94 | 99 | 1.2 | 1.1 | 1.0 | 0.9 | 0.8 | 0.7 | 0.7 | | | |
| 95 | 100 | 1.1 | 1.0 | 1.0 | 0.9 | 0.8 | 0.7 | 0.6 | | | |
| 96 | 101 | 1.1 | 1.0 | 0.9 | 0.8 | 0.7 | 0.7 | | | | |
| 97 | 102 | 1.0 | 0.9 | 0.8 | 0.7 | 0.7 | 0.6 | | | | |
| 98 | 103 | 0.9 | 0.8 | 0.7 | 0.7 | 0.6 | | | | | |
| 99 | 104 | 0.8 | 0.7 | 0.7 | 0.6 | ............ | ............ | ............ | ............ | ............ | ............ |

TABLE III—PERCENT VALUE OF REFUND FEATURE

| Ages | | Duration of guaranteed amount—[Years] | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 6 | 11 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 |
| 7 | 12 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 |
| 8 | 13 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 9 | 14 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 10 | 15 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 11 | 16 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 12 | 17 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 13 | 18 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 14 | 19 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 15 | 20 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 16 | 21 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 17 | 22 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 18 | 23 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 19 | 24 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 20 | 25 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 21 | 26 | .......... | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 |
| 22 | 27 | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 23 | 28 | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 24 | 29 | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 25 | 30 | .......... | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 26 | 31 | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 27 | 32 | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 28 | 33 | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 29 | 34 | .......... | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 |
| 30 | 35 | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 |
| 31 | 36 | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 |
| 32 | 37 | .......... | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 33 | 38 | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 34 | 39 | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 |
| 35 | 40 | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 |
| 36 | 41 | .......... | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 3 |
| 37 | 42 | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 3 | 3 |
| 38 | 43 | .......... | .......... | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 3 | 3 |
| 39 | 44 | .......... | .......... | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 3 | 3 | 3 |
| 40 | 45 | .......... | .......... | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 3 | 3 | 4 |
| 41 | 46 | .......... | .......... | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 3 | 3 | 4 |
| 42 | 47 | .......... | .......... | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 3 | 3 | 4 | 4 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 43 | 48 | ...... | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 3 | 4 | 4 | 4 |
| 44 | 49 | ...... | 1 | 1 | 1 | 1 | 2 | 2 | 3 | 3 | 3 | 4 | 4 | 5 |
| 45 | 50 | ...... | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 3 | 4 | 4 | 5 | 5 |
| 46 | 51 | ...... | 1 | 1 | 1 | 2 | 2 | 3 | 3 | 3 | 4 | 4 | 5 | 5 |
| 47 | 52 | ...... | 1 | 1 | 1 | 2 | 2 | 3 | 3 | 4 | 4 | 5 | 5 | 6 |
| 48 | 53 | ...... | 1 | 1 | 2 | 2 | 2 | 3 | 3 | 4 | 5 | 5 | 6 | 6 |
| 49 | 54 | ...... | 1 | 1 | 2 | 2 | 3 | 3 | 4 | 4 | 5 | 5 | 6 | 7 |
| 50 | 55 | ...... | 1 | 1 | 2 | 2 | 3 | 3 | 4 | 5 | 5 | 6 | 7 | 7 |
| 51 | 56 | ...... | 1 | 1 | 2 | 3 | 3 | 4 | 4 | 5 | 6 | 6 | 7 | 8 |
| 52 | 57 | 1 | 1 | 2 | 2 | 3 | 3 | 4 | 5 | 5 | 6 | 7 | 8 | 8 |
| 53 | 58 | 1 | 1 | 2 | 2 | 3 | 4 | 4 | 5 | 6 | 7 | 7 | 8 | 9 |
| 54 | 59 | 1 | 1 | 2 | 2 | 3 | 4 | 5 | 5 | 6 | 7 | 8 | 9 | 10 |
| 55 | 60 | 1 | 1 | 2 | 3 | 3 | 4 | 5 | 6 | 7 | 8 | 8 | 9 | 10 |
| 56 | 61 | 1 | 1 | 2 | 3 | 4 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 57 | 62 | 1 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 58 | 63 | 1 | 2 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 12 | 13 |
| 59 | 64 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 14 |
| 60 | 65 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 10 | 11 | 12 | 13 | 15 |
| 61 | 66 | 1 | 2 | 3 | 4 | 5 | 6 | 8 | 9 | 10 | 12 | 13 | 14 | 16 |
| 62 | 67 | 1 | 2 | 3 | 4 | 6 | 7 | 8 | 10 | 11 | 12 | 14 | 15 | 17 |
| 63 | 68 | 1 | 2 | 4 | 5 | 6 | 7 | 9 | 10 | 12 | 13 | 15 | 16 | 18 |
| 64 | 69 | 1 | 3 | 4 | 5 | 7 | 8 | 9 | 11 | 13 | 14 | 16 | 17 | 19 |
| 65 | 70 | 1 | 3 | 4 | 6 | 7 | 9 | 10 | 12 | 13 | 15 | 17 | 19 | 20 |
| 66 | 71 | 1 | 3 | 4 | 6 | 8 | 9 | 11 | 13 | 14 | 16 | 18 | 20 | 22 |
| 67 | 72 | 2 | 3 | 5 | 6 | 8 | 10 | 12 | 14 | 15 | 17 | 19 | 21 | 23 |
| 68 | 73 | 2 | 3 | 5 | 7 | 9 | 11 | 13 | 14 | 16 | 18 | 21 | 23 | 25 |
| 69 | 74 | 2 | 4 | 6 | 7 | 9 | 11 | 13 | 16 | 18 | 20 | 22 | 24 | 26 |
| 70 | 75 | 2 | 4 | 6 | 8 | 10 | 12 | 14 | 17 | 19 | 21 | 23 | 26 | 28 |
| 71 | 76 | 2 | 4 | 6 | 9 | 11 | 13 | 15 | 18 | 20 | 22 | 25 | 27 | 29 |
| 72 | 77 | 2 | 5 | 7 | 9 | 12 | 14 | 16 | 19 | 21 | 24 | 26 | 29 | 31 |
| 73 | 78 | 2 | 5 | 7 | 10 | 12 | 15 | 18 | 20 | 23 | 25 | 28 | 30 | 33 |
| 74 | 79 | 3 | 5 | 8 | 11 | 13 | 16 | 19 | 22 | 24 | 27 | 30 | 32 | 35 |
| 75 | 80 | 3 | 6 | 8 | 11 | 14 | 17 | 20 | 23 | 26 | 29 | 31 | 34 | 37 |
| 76 | 81 | 3 | 6 | 9 | 12 | 15 | 18 | 21 | 24 | 27 | 30 | 33 | 36 | 39 |
| 77 | 82 | 3 | 7 | 10 | 13 | 16 | 20 | 23 | 26 | 29 | 32 | 35 | 38 | 41 |
| 78 | 83 | 4 | 7 | 11 | 14 | 17 | 21 | 24 | 28 | 31 | 34 | 37 | 40 | 43 |
| 79 | 84 | 4 | 8 | 11 | 15 | 19 | 22 | 26 | 29 | 33 | 36 | 39 | 42 | 45 |
| 80 | 85 | 4 | 8 | 12 | 16 | 20 | 24 | 27 | 31 | 34 | 38 | 41 | 44 | 47 |
| 81 | 86 | 4 | 9 | 13 | 17 | 21 | 25 | 29 | 33 | 36 | 40 | 43 | 46 | 49 |
| 82 | 87 | 5 | 9 | 14 | 18 | 23 | 27 | 31 | 35 | 38 | 42 | 45 | 48 | 51 |
| 83 | 88 | 5 | 10 | 15 | 19 | 24 | 28 | 33 | 37 | 40 | 44 | 47 | 50 | 53 |
| 84 | 89 | 5 | 11 | 16 | 21 | 26 | 30 | 34 | 38 | 42 | 46 | 49 | 52 | 55 |

TABLE III—PERCENT VALUE OF REFUND FEATURE—Continued

| Ages | | Duration of guaranteed amount—[Years] | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 85 | 90 | 6 | 11 | 17 | 22 | 27 | 32 | 36 | 41 | 44 | 48 | 51 | 55 | 57 |

| Ages | | Duration of guaranteed amount—[Years] | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 6 | 11 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 7 | 12 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 8 | 13 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 9 | 14 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 10 | 15 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 |
| 11 | 16 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 |
| 12 | 17 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 |
| 13 | 18 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 |
| 14 | 19 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 |
| 15 | 20 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 |
| 16 | 21 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 |
| 17 | 22 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 |
| 18 | 23 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 19 | 24 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 20 | 25 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 |
| 21 | 26 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 |
| 22 | 27 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 |
| 23 | 28 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 |
| 24 | 29 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 |
| 25 | 30 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 3 |
| 26 | 31 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 4 |
| 27 | 32 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 |
| 28 | 33 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 4 |
| 29 | 34 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 |
| 30 | 35 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 |
| 31 | 36 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 5 |
| 32 | 37 | 2 | 2 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 5 | 6 |
| 33 | 38 | 2 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 5 | 6 | 6 |
| 34 | 39 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 7 |
| 35 | 40 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 7 | 7 |
| 36 | 41 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 7 | 7 | 8 |
| 37 | 42 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 6 | 6 | 7 | 7 | 8 | 8 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 38 | 43 | 3 | 4 | 4 | 4 | 5 | 5 | 6 | 6 | 7 | 7 | 8 | 8 | 9 |
| 39 | 44 | 4 | 4 | 4 | 5 | 5 | 6 | 6 | 7 | 7 | 8 | 8 | 9 | 9 |
| 40 | 45 | 4 | 4 | 5 | 5 | 6 | 6 | 7 | 7 | 8 | 8 | 9 | 9 | 10 |
| 41 | 46 | 4 | 5 | 5 | 6 | 6 | 7 | 7 | 8 | 8 | 9 | 9 | 10 | 11 |
| 42 | 47 | 5 | 5 | 5 | 6 | 6 | 7 | 8 | 8 | 9 | 9 | 10 | 11 | 12 |
| 43 | 48 | | 5 | 6 | 6 | 7 | 8 | 8 | 9 | 9 | 10 | 11 | 12 | 12 |
| 44 | 49 | 5 | 6 | 6 | 7 | 7 | 8 | 9 | 9 | 10 | 11 | 12 | 12 | 13 |
| 45 | 50 | 6 | 6 | 7 | 7 | 8 | 9 | 9 | 10 | 11 | 12 | 12 | 13 | 14 |
| 46 | 51 | 6 | 7 | 7 | 8 | 9 | 9 | 10 | 11 | 12 | 12 | 13 | 14 | 15 |
| 47 | 52 | 7 | 7 | 8 | 9 | 9 | 10 | 11 | 12 | 12 | 13 | 14 | 15 | 16 |
| 48 | 53 | 7 | 8 | 8 | 9 | 10 | 11 | 12 | 12 | 13 | 14 | 15 | 16 | 17 |
| 49 | 54 | 8 | 8 | 9 | 10 | 11 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 50 | 55 | 8 | 9 | 10 | 11 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 20 |
| 51 | 56 | 9 | 10 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 20 | 21 |
| 52 | 57 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 20 | 21 | 22 |
| 53 | 58 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 19 | 20 | 21 | 22 | 24 |
| 54 | 59 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 20 | 21 | 22 | 24 | 25 |
| 55 | 60 | 11 | 13 | 14 | 15 | 16 | 17 | 18 | 20 | 21 | 22 | 24 | 25 | 26 |
| 56 | 61 | 12 | 13 | 15 | 16 | 17 | 18 | 20 | 21 | 22 | 24 | 25 | 27 | 28 |
| 57 | 62 | 13 | 14 | 16 | 17 | 18 | 20 | 21 | 22 | 24 | 25 | 27 | 28 | 30 |
| 58 | 63 | 14 | 15 | 17 | 18 | 19 | 21 | 22 | 24 | 25 | 27 | 28 | 30 | 31 |
| 59 | 64 | 15 | 16 | 18 | 19 | 21 | 22 | 24 | 25 | 27 | 28 | 30 | 31 | 33 |
| 60 | 65 | 16 | 18 | 19 | 20 | 22 | 24 | 25 | 27 | 28 | 30 | 32 | 33 | 35 |
| 61 | 66 | 17 | 19 | 20 | 22 | 23 | 25 | 27 | 28 | 30 | 32 | 33 | 35 | 37 |
| 62 | 67 | 18 | 20 | 22 | 23 | 25 | 27 | 28 | 30 | 32 | 33 | 35 | 37 | 38 |
| 63 | 68 | 20 | 21 | 23 | 25 | 26 | 28 | 30 | 32 | 33 | 35 | 37 | 39 | 40 |
| 64 | 69 | 21 | 23 | 24 | 26 | 28 | 30 | 32 | 33 | 35 | 37 | 39 | 41 | 42 |
| 65 | 70 | 22 | 24 | 26 | 28 | 30 | 32 | 33 | 35 | 37 | 39 | 41 | 42 | 44 |
| 66 | 71 | 24 | 26 | 28 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 44 | 46 |
| 67 | 72 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 46 | 48 |
| 68 | 73 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 47 | 48 | 50 |
| 69 | 74 | 28 | 30 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 47 | 48 | 50 | 52 |
| 70 | 75 | 30 | 32 | 34 | 37 | 39 | 41 | 43 | 45 | 47 | 49 | 50 | 52 | 54 |
| 71 | 76 | 32 | 34 | 36 | 39 | 41 | 43 | 45 | 47 | 49 | 51 | 52 | 54 | 56 |
| 72 | 77 | 34 | 36 | 38 | 41 | 43 | 45 | 47 | 49 | 51 | 53 | 54 | 56 | 58 |
| 73 | 78 | 35 | 38 | 40 | 43 | 45 | 47 | 49 | 51 | 53 | 55 | 56 | 58 | 59 |
| 74 | 79 | 37 | 40 | 42 | 45 | 47 | 49 | 51 | 53 | 55 | 57 | 58 | 60 | 61 |
| 75 | 80 | 39 | 42 | 44 | 47 | 49 | 51 | 53 | 55 | 57 | 58 | 60 | 62 | 63 |
| 76 | 81 | 41 | 44 | 46 | 49 | 51 | 53 | 55 | 57 | 59 | 60 | 62 | 63 | 65 |
| 77 | 82 | 43 | 46 | 48 | 51 | 53 | 55 | 57 | 59 | 61 | 62 | 64 | 65 | 66 |
| 78 | 83 | 45 | 48 | 50 | 53 | 55 | 57 | 59 | 61 | 62 | 64 | 65 | 67 | 68 |
| 79 | 84 | 48 | 50 | 53 | 55 | 57 | 59 | 61 | 63 | 64 | 66 | 67 | 68 | 70 |
| 80 | 85 | 50 | 52 | 55 | 57 | 59 | 61 | 63 | 64 | 66 | 67 | 69 | 70 | 71 |

| Ages | | Duration of guaranteed amount—[Years] | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 81 | 86 | 52 | 54 | 57 | 59 | 61 | 63 | 65 | 66 | 68 | 69 | 70 | 72 | 73 |
| 82 | 87 | 54 | 56 | 59 | 61 | 63 | 65 | 66 | 68 | 69 | 71 | 72 | 73 | 74 |
| 83 | 88 | 56 | 58 | 61 | 63 | 65 | 66 | 68 | 70 | 71 | 72 | 73 | 74 | 75 |
| 84 | 89 | 58 | 60 | 63 | 65 | 67 | 68 | 70 | 71 | 73 | 74 | 75 | 76 | 77 |
| 85 | 90 | 60 | 62 | 65 | 67 | 68 | 70 | 71 | 73 | 74 | 75 | 76 | 77 | ............ |

| Ages | | Duration of guaranteed amount—[Years] | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 |
| 6 | 11 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 7 | 12 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 |
| 8 | 13 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 |
| 9 | 14 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 |
| 10 | 15 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 |
| 11 | 16 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 |
| 12 | 17 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 |
| 13 | 18 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 |
| 14 | 19 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 3 |
| 15 | 20 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 3 |
| 16 | 21 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 3 | 4 |
| 17 | 22 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 |
| 18 | 23 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 4 |
| 19 | 24 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 4 |
| 20 | 25 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 4 | 5 |
| 21 | 26 | 3 | 3 | 3 | 4 | 4 | 4 | 4 | 5 | 5 |
| 22 | 27 | 3 | 3 | 4 | 4 | 4 | 4 | 5 | 5 | 5 |
| 23 | 28 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 5 | 5 |
| 24 | 29 | 3 | 4 | 4 | 4 | 5 | 5 | 5 | 5 | 6 |
| 25 | 30 | 4 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 6 |
| 26 | 31 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 6 | 7 |
| 27 | 32 | 4 | 5 | 5 | 5 | 6 | 6 | 6 | 7 | 7 |
| 28 | 33 | 5 | 5 | 5 | 6 | 6 | 6 | 7 | 7 | 8 |
| 29 | 34 | 5 | 5 | 6 | 6 | 6 | 7 | 7 | 8 | 8 |
| 30 | 35 | 5 | 6 | 6 | 6 | 7 | 7 | 8 | 8 | 9 |
| 31 | 36 | 6 | 6 | 6 | 7 | 7 | 8 | 8 | 9 | 9 |
| 32 | 37 | 6 | 7 | 7 | 7 | 8 | 8 | 9 | 10 | 10 |
| 33 | 38 | 7 | 7 | 7 | 8 | 8 | 9 | 10 | 10 | 11 |
| 34 | 39 | 7 | 8 | 8 | 9 | 9 | 10 | 10 | 11 | 12 |
| 35 | 40 | 8 | 8 | 9 | 9 | 10 | 10 | 11 | 12 | 12 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 36 | 41 | 8 | 9 | 9 | 10 | 10 | 11 | 12 | 13 | 13 |
| 37 | 42 | 9 | 9 | 10 | 11 | 11 | 12 | 13 | 13 | 14 |
| 38 | 43 | 9 | 10 | 11 | 11 | 12 | 13 | 13 | 14 | 15 |
| 39 | 44 | 10 | 11 | 11 | 12 | 13 | 14 | 14 | 15 | 16 |
| 40 | 45 | 11 | 11 | 12 | 13 | 14 | 15 | 15 | 16 | 17 |
| 41 | 46 | 11 | 12 | 13 | 14 | 15 | 16 | 16 | 17 | 18 |
| 42 | 47 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 18 | 19 |
| 43 | 48 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 44 | 49 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 45 | 50 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 46 | 51 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 24 | 25 |
| 47 | 52 | 17 | 18 | 19 | 20 | 21 | 23 | 24 | 25 | 26 |
| 48 | 53 | 18 | 19 | 20 | 22 | 23 | 24 | 25 | 26 | 28 |
| 49 | 54 | 19 | 21 | 22 | 23 | 24 | 25 | 27 | 28 | 29 |
| 50 | 55 | 21 | 22 | 23 | 24 | 26 | 27 | 28 | 29 | 31 |
| 51 | 56 | 22 | 23 | 25 | 26 | 27 | 28 | 30 | 31 | 32 |
| 52 | 57 | 23 | 25 | 26 | 27 | 29 | 30 | 31 | 33 | 34 |
| 53 | 58 | 25 | 26 | 28 | 29 | 30 | 32 | 33 | 34 | 36 |
| 54 | 59 | 26 | 28 | 29 | 31 | 32 | 33 | 35 | 36 | 38 |
| 55 | 60 | 28 | 29 | 31 | 32 | 34 | 35 | 36 | 38 | 39 |
| 56 | 61 | 29 | 31 | 32 | 34 | 35 | 37 | 38 | 40 | 41 |
| 57 | 62 | 31 | 33 | 34 | 36 | 37 | 39 | 40 | 41 | 43 |
| 58 | 63 | 33 | 34 | 36 | 37 | 39 | 40 | 42 | 43 | 45 |
| 59 | 64 | 35 | 36 | 38 | 39 | 41 | 42 | 44 | 45 | 47 |
| 60 | 65 | 36 | 38 | 40 | 41 | 43 | 44 | 46 | 47 | 48 |
| 61 | 66 | 38 | 40 | 41 | 43 | 44 | 46 | 47 | 49 | 50 |
| 62 | 67 | 40 | 42 | 43 | 45 | 46 | 48 | 49 | 51 | 52 |
| 63 | 68 | 42 | 44 | 45 | 47 | 48 | 50 | 51 | 52 | 54 |
| 64 | 69 | 44 | 46 | 47 | 49 | 50 | 52 | 53 | 54 | 55 |
| 65 | 70 | 46 | 47 | 49 | 50 | 52 | 53 | 55 | 56 | 57 |
| 66 | 71 | 48 | 49 | 51 | 52 | 54 | 55 | 56 | 58 | 59 |
| 67 | 72 | 50 | 51 | 53 | 54 | 56 | 57 | 58 | 59 | 61 |
| 68 | 73 | 52 | 53 | 55 | 56 | 57 | 59 | 60 | 61 | 62 |
| 69 | 74 | 53 | 55 | 56 | 58 | 59 | 60 | 62 | 63 | 64 |
| 70 | 75 | 55 | 57 | 58 | 60 | 61 | 62 | 62 | 64 | 65 |
| 71 | 76 | 57 | 59 | 60 | 61 | 63 | 64 | 65 | 66 | 67 |
| 72 | 77 | 59 | 60 | 62 | 63 | 64 | 65 | 66 | 67 | 68 |
| 73 | 78 | 61 | 62 | 64 | 65 | 66 | 67 | 68 | 69 | 70 |
| 74 | 79 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 |
| 75 | 80 | 64 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 72 |
| 76 | 81 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | |

| Ages | | Duration of guaranteed amount—[Years] | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 |
| 77 | 82 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | | |
| 78 | 83 | 69 | 70 | 71 | 72 | 73 | 74 | | | |
| 79 | 84 | 71 | 72 | 73 | 74 | 75 | | | | |
| 80 | 85 | 72 | 73 | 74 | 75 | | | | | |
| 81 | 86 | 74 | 75 | 75 | | | | | | |
| 82 | 87 | 75 | 76 | | | | | | | |
| 83 | 88 | 76 | | | | | | | | |
| 84 | 89. | | | | | | | | | |
| 85 | 90 | ........ | ........ | ........ | ........ | ........ | ........ | ........ | ........ | ........ |

| Ages | | Duration of guaranteed amount—[Years] | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 86 | 91 | 6 | 12 | 18 | 24 | 29 | 34 | 38 | 43 | 47 | 50 | 54 | 57 | 59 | 62 |
| 87 | 92 | 7 | 13 | 19 | 25 | 31 | 36 | 40 | 45 | 49 | 52 | 56 | 59 | 61 | 64 |
| 88 | 93 | 7 | 14 | 21 | 27 | 32 | 38 | 42 | 47 | 51 | 55 | 58 | 61 | 63 | 66 |
| 89 | 94 | 8 | 15 | 22 | 28 | 34 | 40 | 45 | 49 | 53 | 57 | 60 | 63 | 65 | 68 |
| 90 | 95 | 8 | 16 | 23 | 30 | 36 | 42 | 47 | 51 | 55 | 59 | 62 | 65 | 67 | 70 |
| 91 | 96 | 9 | 17 | 25 | 32 | 38 | 44 | 49 | 53 | 57 | 61 | 64 | 67 | 69 | 71 |
| 92 | 97 | 9 | 18 | 26 | 34 | 40 | 46 | 51 | 55 | 59 | 63 | 66 | 69 | 71 | 73 |
| 93 | 98 | 10 | 20 | 28 | 36 | 42 | 48 | 53 | 58 | 62 | 65 | 68 | 70 | 73 | 75 |
| 94 | 99 | 11 | 21 | 30 | 37 | 44 | 50 | 55 | 60 | 64 | 67 | 70 | 72 | 74 | 76 |
| 95 | 100 | 12 | 22 | 31 | 39 | 46 | 52 | 58 | 62 | 66 | 69 | 72 | 74 | 76 | 78 |
| 96 | 101 | 12 | 24 | 33 | 42 | 49 | 55 | 60 | 64 | 68 | 71 | 73 | 76 | 78 | 79 |
| 97 | 102 | 13 | 25 | 35 | 44 | 51 | 57 | 62 | 66 | 70 | 73 | 75 | 77 | 79 | |
| 98 | 103 | 14 | 27 | 37 | 46 | 54 | 60 | 65 | 69 | 72 | 75 | 77 | 79 | | |
| 99 | 104 | 15 | 29 | 40 | 49 | 56 | 62 | 67 | 71 | 74 | 77 | 79 | | | |
| 100 | 105 | 17 | 31 | 43 | 52 | 59 | 65 | 70 | 74 | 76 | 79 | | | | |
| 101 | 106 | 18 | 33 | 46 | 55 | 63 | 68 | 73 | 76 | 79 | | | | | |
| 102 | 107 | 20 | 36 | 49 | 59 | 66 | 71 | 75 | 78 | | | | | | |
| 103 | 108 | 22 | 40 | 53 | 62 | 69 | 74 | 78 | | | | | | | |
| 104 | 109 | 24 | 43 | 57 | 66 | 73 | 77 | | | | | | | | |
| 105 | 110 | 27 | 48 | 61 | 70 | 76 | | | | | | | | | |
| 106 | 111 | | 53 | 66 | 74 | | | | | | | | | | |
| 107 | 112 | 35 | 53 | 71 | | | | | | | | | | | |
| 108 | 113 | 40 | 64 | ........ | ........ | ........ | ........ | ........ | ........ | ........ | ........ | ........ | ........ | ........ | ........ |

| Ages | | Duration of guaranteed amount—[Years] | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 86 | 91 | 64 | 66 | 68 | 70 | 72 | 73 | 74 | 75 | 76 | 77 | |
| 87 | 92 | 66 | 68 | 70 | 72 | 73 | 74 | 76 | 77 | 78 | | |
| 88 | 93 | 68 | 70 | 72 | 73 | 75 | 76 | 77 | 78 | | | |
| 89 | 94 | 70 | 72 | 73 | 75 | 76 | 77 | 78 | | | | |
| 90 | 95 | 72 | 73 | 75 | 76 | 77 | 79 | | | | | |
| 91 | 96 | 73 | 75 | 76 | 78 | 79 | | | | | | |
| 92 | 97 | 75 | 76 | 78 | 79 | | | | | | | |
| 93 | 98 | 76 | 78 | 79 | | | | | | | | |
| 94 | 99 | 78 | 79 | | | | | | | | | |
| 95 | 100 | 79 | ............ | ............ | ............ | ............ | ............ | ............ | ............ | ............ | ............ | ............ |

TABLE IV—TEMPORARY LIFE ANNUITIES [1]—ONE LIFE—EXPECTED RETURN MULTIPLES

[See footnote at end of table]

| Ages | | Temporary period—maximum duration of annuity—[Years] | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 0 to 8 | 0 to 13 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 9 | 14 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 10 | 15 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 11 | 16 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 12 | 17 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 13 | 18 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 14 | 19 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 15 | 20 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 16 | 21 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 17 | 22 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 18 | 23 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 19 | 24 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 20 | 25 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 21 | 26 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 22 | 27 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 23 | 28 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 24 | 29 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 7.9 | 8.9 | 9.9 |
| 25 | 30 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 7.9 | 8.9 | 9.9 |
| 26 | 31 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 7.9 | 8.9 | 9.9 |
| 27 | 32 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 7.9 | 8.9 | 9.9 |
| 28 | 33 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 7.9 | 8.9 | 9.9 |
| 29 | 34 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 6.9 | 7.9 | 8.9 | 9.9 |
| 30 | 35 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 6.9 | 7.9 | 8.9 | 9.9 |

TABLE IV—TEMPORARY LIFE ANNUITIES [1]—ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of table]

| Ages | | Temporary period—maximum duration of annuity—[Years] | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 31 | 36 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 6.9 | 7.9 | 8.9 | 9.9 |
| 32 | 37 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 6.9 | 7.9 | 8.9 | 9.9 |
| 33 | 38 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 6.9 | 7.9 | 8.9 | 9.9 |
| 34 | 39 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 5.9 | 6.9 | 7.9 | 8.9 | 9.8 |
| 35 | 40 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 5.9 | 6.9 | 7.9 | 8.9 | 9.8 |
| 36 | 41 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 5.9 | 6.9 | 7.9 | 8.9 | 9.8 |
| 37 | 42 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 5.9 | 6.9 | 7.9 | 8.8 | 9.8 |
| 38 | 43 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 5.9 | 6.9 | 7.9 | 8.8 | 9.8 |
| 39 | 44 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.9 | 8.8 | 9.8 |
| 40 | 45 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.8 | 8.8 | 9.7 |
| 41 | 46 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.8 | 8.8 | 9.7 |
| 42 | 47 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.8 | 8.8 | 9.7 |
| 43 | 48 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.8 | 8.8 | 9.7 |
| 44 | 49 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.8 | 7.8 | 8.7 | 9.7 |
| 45 | 50 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.9 | 6.8 | 7.8 | 8.7 | 9.6 |
| 46 | 51 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.9 | 6.8 | 7.8 | 8.7 | 9.6 |
| 47 | 52 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.9 | 6.8 | 7.7 | 8.7 | 9.6 |
| 48 | 53 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.9 | 6.8 | 7.7 | 8.6 | 9.5 |
| 49 | 54 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.8 | 6.8 | 7.7 | 8.6 | 9.5 |
| 50 | 55 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.8 | 6.8 | 7.7 | 8.6 | 9.5 |
| 51 | 56 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.8 | 6.7 | 7.7 | 8.6 | 9.4 |
| 52 | 57 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.8 | 6.7 | 7.6 | 8.5 | 9.4 |
| 53 | 58 | 1.0 | 2.0 | 2.9 | 3.9 | 4.9 | 5.8 | 6.7 | 7.6 | 8.5 | 9.3 |
| 54 | 59 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.8 | 6.7 | 7.6 | 8.4 | 9.3 |
| 55 | 60 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.8 | 6.7 | 7.5 | 8.4 | 9.2 |
| 56 | 61 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.7 | 6.6 | 7.5 | 8.4 | 9.2 |
| 57 | 62 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.7 | 6.6 | 7.5 | 8.3 | 9.1 |
| 58 | 63 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.7 | 6.6 | 7.4 | 8.3 | 9.1 |
| 59 | 64 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.7 | 6.5 | 7.4 | 8.2 | 9.0 |
| 60 | 65 | 1.0 | 2.0 | 2.9 | 3.8 | 4.8 | 5.6 | 6.5 | 7.3 | 8.1 | 8.9 |
| 61 | 66 | 1.0 | 2.0 | 2.9 | 3.8 | 4.7 | 5.6 | 6.5 | 7.3 | 8.1 | 8.8 |
| 62 | 67 | 1.0 | 2.0 | 2.9 | 3.8 | 4.7 | 5.6 | 6.4 | 7.2 | 8.0 | 8.8 |
| 63 | 68 | 1.0 | 2.0 | 2.9 | 3.8 | 4.7 | 5.6 | 6.4 | 7.2 | 7.9 | 8.7 |
| 64 | 69 | 1.0 | 1.9 | 2.9 | 3.8 | 4.7 | 5.5 | 6.3 | 7.1 | 7.9 | 8.6 |
| 65 | 70 | 1.0 | 1.9 | 2.9 | 3.8 | 4.6 | 5.5 | 6.3 | 7.1 | 7.8 | 8.5 |

| Male | Female | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 66 | 71 | 1.0 | 1.9 | 2.9 | 3.8 | 4.6 | 5.4 | 6.2 | 7.0 | 7.7 | 8.4 |
| 67 | 72 | 1.0 | 1.9 | 2.9 | 3.7 | 4.6 | 5.4 | 6.2 | 6.9 | 7.6 | 8.3 |
| 68 | 73 | 1.0 | 1.9 | 2.8 | 3.7 | 4.6 | 5.4 | 6.1 | 6.8 | 7.5 | 8.2 |
| 69 | 74 | 1.0 | 1.9 | 2.8 | 3.7 | 4.5 | 5.3 | 6.1 | 6.8 | 7.4 | 8.0 |
| 70 | 75 | 1.0 | 1.9 | 2.8 | 3.7 | 4.5 | 5.3 | 6.0 | 6.7 | 7.3 | 7.9 |
| 71 | 76 | 1.0 | 1.9 | 2.8 | 3.7 | 4.5 | 5.2 | 5.9 | 6.6 | 7.2 | 7.8 |
| 72 | 77 | 1.0 | 1.9 | 2.8 | 3.6 | 4.4 | 5.2 | 5.8 | 6.5 | 7.1 | 7.6 |
| 73 | 78 | 1.0 | 1.9 | 2.8 | 3.6 | 4.4 | 5.1 | 5.8 | 6.4 | 7.0 | 7.5 |
| 74 | 79 | 1.0 | 1.9 | 2.8 | 3.6 | 4.3 | 5.0 | 5.7 | 6.3 | 6.8 | 7.3 |
| 75 | 80 | 1.0 | 1.9 | 2.7 | 3.5 | 4.3 | 5.0 | 5.6 | 6.2 | 6.7 | 7.1 |
| 76 | 81 | 1.0 | 1.9 | 2.7 | 3.5 | 4.2 | 4.9 | 5.5 | 6.1 | 6.5 | 7.0 |
| 77 | 82 | 1.0 | 1.9 | 2.7 | 3.5 | 4.2 | 4.8 | 5.4 | 5.9 | 6.4 | 6.8 |
| 78 | 83 | 1.0 | 1.9 | 2.7 | 3.4 | 4.1 | 4.7 | 5.3 | 5.8 | 6.2 | 6.6 |
| 79 | 84 | 1.0 | 1.8 | 2.7 | 3.4 | 4.1 | 4.7 | 5.2 | 5.7 | 6.1 | 6.4 |
| 80 | 85 | 1.0 | 1.8 | 2.6 | 3.4 | 4.0 | 4.6 | 5.1 | 5.5 | 5.9 | 6.2 |
| 81 | 86 | 1.0 | 1.8 | 2.6 | 3.3 | 3.9 | 4.5 | 5.0 | 5.4 | 5.7 | 6.0 |
| 82 | 87 | 1.0 | 1.8 | 2.6 | 3.3 | 3.9 | 4.4 | 4.8 | 5.2 | 5.6 | 5.8 |
| 83 | 88 | .9 | 1.8 | 2.6 | 3.2 | 3.8 | 4.3 | 4.7 | 5.1 | 5.4 | 5.6 |
| 84 | 89 | .9 | 1.8 | 2.5 | 3.2 | 3.7 | 4.2 | 4.6 | 4.9 | 5.2 | 5.4 |
| 85 | 90 | .9 | 1.8 | 2.5 | 3.1 | 3.6 | 4.1 | 4.5 | 4.8 | 5.0 | 5.2 |
| 86 | 91 | .9 | 1.8 | 2.5 | 3.1 | 3.6 | 4.0 | 4.3 | 4.6 | 4.8 | 5.0 |

| Ages | | Temporary period—maximum duration of annuity—[Years] | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 0 to 8 | 0 to 13 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.8 | 19.7 |
| 9 | 14 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.8 | 19.7 |
| 10 | 15 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.8 | 19.7 |
| 11 | 16 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.8 | 19.7 |
| 12 | 17 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.8 | 19.7 |
| 13 | 18 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.8 | 19.7 |
| 14 | 19 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.8 | 19.7 |
| 15 | 20 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.7 | 19.7 |
| 16 | 21 | 10.9 | 11.9 | 12.9 | 13.9 | 14.8 | 15.8 | 16.8 | 17.8 | 18.7 | 19.7 |
| 17 | 22 | 10.9 | 11.9 | 12.9 | 13.9 | 14.8 | 15.8 | 16.8 | 17.8 | 18.7 | 19.7 |
| 18 | 23 | 10.9 | 11.9 | 12.9 | 13.9 | 14.8 | 15.8 | 16.8 | 17.8 | 18.7 | 19.7 |
| 19 | 24 | 10.9 | 11.9 | 12.9 | 13.9 | 14.8 | 15.8 | 16.8 | 17.7 | 18.7 | 19.7 |
| 20 | 25 | 10.9 | 11.9 | 12.9 | 13.9 | 14.8 | 15.8 | 16.8 | 17.7 | 18.7 | 19.7 |
| 21 | 26 | 10.9 | 11.9 | 12.9 | 13.8 | 14.8 | 15.8 | 16.8 | 17.7 | 18.7 | 19.6 |
| 22 | 27 | 10.9 | 11.9 | 12.9 | 13.8 | 14.8 | 15.8 | 16.7 | 17.7 | 18.7 | 19.6 |
| 23 | 28 | 10.9 | 11.9 | 12.9 | 13.8 | 14.8 | 15.8 | 16.7 | 17.7 | 18.7 | 19.6 |
| 24 | 29 | 10.9 | 11.9 | 12.9 | 13.8 | 14.8 | 15.8 | 16.7 | 17.7 | 18.6 | 19.6 |
| 25 | 30 | 10.9 | 11.9 | 12.8 | 13.8 | 14.8 | 15.7 | 16.7 | 17.7 | 18.6 | 19.6 |

| Ages | | Temporary period—maximum duration of annuity—[Years] | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 26 | 31 | 10.9 | 11.9 | 12.8 | 13.8 | 14.8 | 15.7 | 16.7 | 17.6 | 18.6 | 19.5 |
| 27 | 32 | 10.9 | 11.9 | 12.8 | 13.8 | 14.8 | 15.7 | 16.7 | 17.6 | 18.6 | 19.5 |
| 28 | 33 | 10.9 | 11.8 | 12.8 | 13.8 | 14.7 | 15.7 | 16.6 | 17.6 | 18.5 | 19.5 |
| 29 | 34 | 10.9 | 11.8 | 12.8 | 13.8 | 14.7 | 15.7 | 16.6 | 17.6 | 18.5 | 19.4 |
| 30 | 35 | 10.9 | 11.8 | 12.8 | 13.7 | 14.7 | 15.6 | 16.6 | 17.5 | 18.4 | 19.4 |
| 31 | 36 | 10.8 | 11.8 | 12.8 | 13.7 | 14.7 | 15.6 | 16.5 | 17.5 | 18.4 | 19.3 |
| 32 | 37 | 10.8 | 11.8 | 12.7 | 13.7 | 14.6 | 15.6 | 16.5 | 17.4 | 18.4 | 19.3 |
| 33 | 38 | 10.8 | 11.8 | 12.7 | 13.7 | 14.6 | 15.6 | 16.5 | 17.4 | 18.3 | 19.2 |
| 34 | 39 | 10.8 | 11.8 | 12.7 | 13.6 | 14.6 | 15.5 | 16.4 | 17.4 | 18.3 | 19.2 |
| 35 | 40 | 10.8 | 11.7 | 12.7 | 13.6 | 14.6 | 15.5 | 16.4 | 17.3 | 18.2 | 19.1 |
| 36 | 41 | 10.8 | 11.7 | 12.7 | 13.6 | 14.5 | 15.4 | 16.3 | 17.2 | 18.1 | 19.0 |
| 37 | 42 | 10.8 | 11.7 | 12.6 | 13.6 | 14.5 | 15.4 | 16.3 | 17.2 | 18.1 | 18.9 |
| 38 | 43 | 10.7 | 11.7 | 12.6 | 13.5 | 14.4 | 15.3 | 16.2 | 17.1 | 18.0 | 18.9 |
| 39 | 44 | 10.7 | 11.6 | 12.6 | 13.5 | 14.4 | 15.3 | 16.2 | 17.1 | 17.9 | 18.8 |
| 40 | 45 | 10.7 | 11.6 | 12.5 | 13.5 | 14.4 | 15.2 | 16.1 | 17.0 | 17.8 | 18.7 |
| 41 | 46 | 10.7 | 11.6 | 12.5 | 13.4 | 14.3 | 15.2 | 16.1 | 16.9 | 17.8 | 18.6 |
| 42 | 47 | 10.6 | 11.6 | 12.5 | 13.4 | 14.3 | 15.1 | 16.0 | 16.8 | 17.7 | 18.5 |
| 43 | 48 | 10.6 | 11.5 | 12.4 | 13.3 | 14.2 | 15.1 | 15.9 | 16.7 | 17.6 | 18.4 |
| 44 | 49 | 10.6 | 11.5 | 12.4 | 13.3 | 14.1 | 15.0 | 15.8 | 16.7 | 17.5 | 18.3 |
| 45 | 50 | 10.5 | 11.4 | 12.3 | 13.2 | 14.1 | 14.9 | 15.7 | 16.6 | 17.4 | 18.1 |
| 46 | 51 | 10.5 | 11.4 | 12.3 | 13.2 | 14.0 | 14.8 | 15.7 | 16.5 | 17.2 | 18.0 |
| 47 | 52 | 10.5 | 11.4 | 12.2 | 13.1 | 13.9 | 14.7 | 15.6 | 16.3 | 17.1 | 17.8 |
| 48 | 53 | 10.4 | 11.3 | 12.2 | 13.0 | 13.8 | 14.7 | 15.4 | 16.2 | 17.0 | 17.7 |
| 49 | 54 | 10.4 | 11.3 | 12.1 | 12.9 | 13.8 | 14.6 | 15.3 | 16.1 | 16.8 | 17.5 |
| 50 | 55 | 10.3 | 11.2 | 12.0 | 12.9 | 13.7 | 14.5 | 15.2 | 16.0 | 16.7 | 17.4 |
| 51 | 56 | 10.3 | 11.1 | 12.0 | 12.8 | 13.6 | 14.3 | 15.1 | 15.8 | 16.5 | 17.2 |
| 52 | 57 | 10.2 | 11.1 | 11.9 | 12.7 | 13.5 | 14.2 | 14.9 | 15.6 | 16.3 | 17.0 |
| 53 | 58 | 10.2 | 11.0 | 11.8 | 12.6 | 13.4 | 14.1 | 14.8 | 15.5 | 16.1 | 16.8 |
| 54 | 59 | 10.1 | 10.9 | 11.7 | 12.5 | 13.2 | 14.0 | 14.6 | 15.3 | 15.9 | 16.5 |
| 55 | 60 | 10.1 | 10.9 | 11.6 | 12.4 | 13.1 | 13.8 | 14.5 | 15.1 | 15.7 | 16.3 |
| 56 | 61 | 10.0 | 10.8 | 11.5 | 12.3 | 13.0 | 13.7 | 14.3 | 14.9 | 15.5 | 16.1 |
| 57 | 62 | 9.9 | 10.7 | 11.4 | 12.2 | 12.8 | 13.5 | 14.1 | 14.7 | 15.3 | 15.8 |
| 58 | 63 | 9.8 | 10.6 | 11.3 | 12.0 | 12.7 | 13.3 | 13.9 | 14.5 | 15.0 | 15.5 |
| 59 | 64 | 9.8 | 10.5 | 11.2 | 11.9 | 12.5 | 13.2 | 13.7 | 14.3 | 14.8 | 15.3 |
| 60 | 65 | 9.7 | 10.4 | 11.1 | 11.7 | 12.4 | 13.0 | 13.5 | 14.0 | 14.5 | 15.0 |
| 61 | 66 | 9.6 | 10.3 | 11.0 | 11.6 | 12.2 | 12.8 | 13.3 | 13.8 | 14.2 | 14.7 |
| 62 | 67 | 9.5 | 10.2 | 10.8 | 11.4 | 12.0 | 12.5 | 13.1 | 13.5 | 14.0 | 14.3 |
| 63 | 68 | 9.4 | 10.0 | 10.7 | 11.3 | 11.8 | 12.3 | 12.8 | 13.2 | 13.7 | 14.0 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 64 | 69 | 9.3 | 9.9 | 10.5 | 11.1 | 11.6 | 12.1 | 12.5 | 13.0 | 13.3 | 13.7 |
| 65 | 70 | 9.1 | 9.8 | 10.3 | 10.9 | 11.4 | 11.9 | 12.3 | 12.7 | 13.0 | 13.3 |
| 66 | 71 | 9.0 | 9.6 | 10.2 | 10.7 | 11.2 | 11.6 | 12.0 | 12.4 | 12.7 | 13.0 |
| 67 | 72 | 8.9 | 9.5 | 10.0 | 10.5 | 10.9 | 11.3 | 11.7 | 12.0 | 12.3 | 12.6 |
| 68 | 73 | 8.7 | 9.3 | 9.8 | 10.3 | 10.7 | 11.1 | 11.4 | 11.7 | 12.0 | 12.2 |
| 69 | 74 | 8.6 | 9.1 | 9.6 | 10.0 | 10.4 | 10.8 | 11.1 | 11.4 | 11.6 | 11.8 |
| 70 | 75 | 8.4 | 8.9 | 9.4 | 9.8 | 10.2 | 10.5 | 10.8 | 11.0 | 11.2 | 11.4 |
| 71 | 76 | 8.3 | 8.7 | 9.2 | 9.6 | 9.9 | 10.2 | 10.4 | 10.7 | 10.9 | 11.0 |
| 72 | 77 | 8.1 | 8.6 | 8.9 | 9.3 | 9.6 | 9.9 | 10.1 | 10.3 | 10.5 | 10.6 |
| 73 | 78 | 7.9 | 8.3 | 8.7 | 9.0 | 9.3 | 9.6 | 9.8 | 9.9 | 10.1 | 10.2 |
| 74 | 79 | 7.7 | 8.1 | 8.5 | 8.8 | 9.0 | 9.2 | 9.4 | 9.6 | 9.7 | 9.8 |
| 75 | 80 | 7.6 | 7.9 | 8.2 | 8.5 | 8.7 | 8.9 | 9.1 | 9.2 | 9.3 | 9.4 |
| 76 | 81 | 7.4 | 7.7 | 8.0 | 8.2 | 8.4 | 8.6 | 8.7 | 8.8 | 8.9 | 9.0 |
| 77 | 82 | 7.1 | 7.5 | 7.7 | 7.9 | 8.1 | 8.3 | 8.4 | 8.5 | 8.5 | 8.6 |
| 78 | 83 | 6.9 | 7.2 | 7.4 | 7.6 | 7.8 | 7.9 | 8.0 | 8.1 | 8.2 | 8.2 |
| 79 | 84 | 6.7 | 7.0 | 7.2 | 7.3 | 7.5 | 7.6 | 7.7 | 7.7 | 7.8 | 7.8 |
| 80 | 85 | 6.5 | 6.7 | 6.9 | 7.1 | 7.2 | 7.3 | 7.3 | 7.4 | 7.4 | 7.4 |
| 81 | 86 | 6.3 | 6.5 | 6.6 | 6.8 | 6.9 | 6.9 | 7.0 | 7.0 | 7.1 | |
| 82 | 87 | 6.0 | 6.2 | 6.4 | 6.5 | 6.5 | 6.6 | 6.7 | 6.7 | | |
| 83 | 88 | 5.8 | 6.0 | 6.1 | 6.2 | 6.2 | 6.3 | 6.3 | | | |
| 84 | 89 | 5.6 | 5.7 | 5.8 | 5.9 | 5.9 | 6.0 | | | | |
| 85 | 90 | 5.3 | 5.5 | 5.5 | 5.6 | 5.6 | | | | | |
| 86 | 91 | 5.1 | 5.2 | 5.3 | 5.3 | ............ | ............ | ............ | ............ | ............ | ............ |

| Ages | | Temporary period—maximum duration of annuity—[Years] | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 0 to 8 | 0 to 13 | 20.7 | 21.7 | 22.7 | 23.6 | 24.6 | 25.6 | 26.5 | 27.5 | 28.4 | 29.4 |
| 9 | 14 | 20.7 | 21.7 | 22.7 | 23.6 | 24.6 | 25.5 | 26.5 | 27.5 | 28.4 | 29.4 |
| 10 | 15 | 20.7 | 21.7 | 22.7 | 23.6 | 24.6 | 25.5 | 26.5 | 27.5 | 28.4 | 29.4 |
| 11 | 16 | 20.7 | 21.7 | 22.6 | 23.6 | 24.6 | 25.5 | 26.5 | 27.4 | 28.4 | 29.3 |
| 12 | 17 | 20.7 | 21.7 | 22.6 | 23.6 | 24.6 | 25.5 | 26.5 | 27.4 | 28.4 | 29.3 |
| 13 | 18 | 20.7 | 21.7 | 22.6 | 23.6 | 24.6 | 25.5 | 26.5 | 27.4 | 28.4 | 29.3 |
| 14 | 19 | 20.7 | 21.7 | 22.6 | 23.6 | 24.5 | 25.5 | 26.4 | 27.4 | 28.3 | 29.3 |
| 15 | 20 | 20.7 | 21.6 | 22.6 | 23.6 | 24.5 | 25.5 | 26.4 | 27.4 | 28.3 | 29.2 |
| 16 | 21 | 20.7 | 21.6 | 22.6 | 23.6 | 24.5 | 25.5 | 26.4 | 27.3 | 28.3 | 29.2 |
| 17 | 22 | 20.7 | 21.6 | 22.6 | 23.5 | 24.5 | 25.4 | 26.4 | 27.3 | 28.2 | 29.2 |
| 18 | 23 | 20.7 | 21.6 | 22.6 | 23.5 | 24.5 | 25.4 | 26.3 | 27.3 | 28.2 | 29.1 |
| 19 | 24 | 20.6 | 21.6 | 22.5 | 23.5 | 24.4 | 25.4 | 26.3 | 27.2 | 28.1 | 29.1 |
| 20 | 25 | 20.6 | 21.6 | 22.5 | 23.5 | 24.4 | 25.3 | 26.3 | 27.2 | 28.1 | 29.0 |
| 21 | 26 | 20.6 | 21.5 | 22.5 | 23.4 | 24.4 | 25.3 | 26.2 | 27.1 | 28.0 | 28.9 |
| 22 | 27 | 20.6 | 21.5 | 22.5 | 23.4 | 24.3 | 25.3 | 26.2 | 27.1 | 28.0 | 28.9 |

| Ages | | Temporary period—maximum duration of annuity—[Years] | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Male | Female | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 23 | 28 | 20.6 | 21.5 | 22.4 | 23.4 | 24.3 | 25.2 | 26.1 | 27.0 | 27.9 | 28.8 |
| 24 | 29 | 20.5 | 21.5 | 22.4 | 23.3 | 24.2 | 25.2 | 26.1 | 27.0 | 27.8 | 28.7 |
| 25 | 30 | 20.5 | 21.4 | 22.4 | 23.3 | 24.2 | 25.1 | 26.0 | 26.9 | 27.8 | 28.6 |
| 26 | 31 | 20.5 | 21.4 | 22.3 | 23.2 | 24.1 | 25.0 | 25.9 | 26.8 | 27.7 | 28.5 |
| 27 | 32 | 20.4 | 21.3 | 22.3 | 23.2 | 24.1 | 25.0 | 25.8 | 26.7 | 27.6 | 28.4 |
| 28 | 33 | 20.4 | 21.3 | 22.2 | 23.1 | 24.0 | 24.9 | 25.8 | 26.6 | 27.5 | 28.3 |
| 29 | 34 | 20.3 | 21.2 | 22.1 | 23.0 | 23.9 | 24.8 | 25.7 | 26.5 | 27.4 | 28.2 |
| 30 | 35 | 20.3 | 21.2 | 22.1 | 23.0 | 23.8 | 24.7 | 25.6 | 26.4 | 27.2 | 28.1 |
| 31 | 36 | 20.2 | 21.1 | 22.0 | 22.9 | 23.8 | 24.6 | 25.5 | 26.3 | 27.1 | 27.9 |
| 32 | 37 | 20.2 | 21.1 | 21.9 | 22.8 | 23.7 | 24.5 | 25.4 | 26.2 | 27.0 | 27.8 |
| 33 | 38 | 20.1 | 21.0 | 21.9 | 22.7 | 23.6 | 24.4 | 25.2 | 26.0 | 26.8 | 27.6 |
| 34 | 39 | 20.0 | 20.9 | 21.8 | 22.6 | 23.5 | 24.3 | 25.1 | 25.9 | 26.7 | 27.4 |
| 35 | 40 | 20.0 | 20.8 | 21.7 | 22.5 | 23.3 | 24.2 | 25.0 | 25.7 | 26.5 | 27.2 |
| 36 | 41 | 19.9 | 20.7 | 21.6 | 22.4 | 23.2 | 24.0 | 24.8 | 25.6 | 26.3 | 27.0 |
| 37 | 42 | 19.8 | 20.6 | 21.5 | 22.3 | 23.1 | 23.9 | 24.6 | 25.4 | 26.1 | 26.8 |
| 38 | 43 | 19.7 | 20.5 | 21.4 | 22.2 | 23.0 | 23.7 | 24.5 | 25.2 | 25.9 | 26.6 |
| 39 | 44 | 19.6 | 20.4 | 21.2 | 22.0 | 22.8 | 23.6 | 24.3 | 25.0 | 25.7 | 26.4 |
| 40 | 45 | 19.5 | 20.3 | 21.1 | 21.9 | 22.6 | 23.4 | 24.1 | 24.8 | 25.5 | 26.1 |
| 41 | 46 | 19.4 | 20.2 | 21.0 | 21.7 | 22.5 | 23.2 | 23.9 | 24.6 | 25.2 | 25.9 |
| 42 | 47 | 19.3 | 20.1 | 20.8 | 21.6 | 22.3 | 23.0 | 23.7 | 24.3 | 25.0 | 25.6 |
| 43 | 48 | 19.2 | 19.9 | 20.7 | 21.4 | 22.1 | 22.8 | 23.4 | 24.1 | 24.7 | 25.3 |
| 44 | 49 | 19.0 | 19.8 | 20.5 | 21.2 | 21.9 | 22.6 | 23.2 | 23.8 | 24.4 | 25.0 |
| 45 | 50 | 18.9 | 19.6 | 20.3 | 21.0 | 21.7 | 22.3 | 22.9 | 23.5 | 24.1 | 24.6 |
| 46 | 51 | 18.7 | 19.4 | 20.1 | 20.8 | 21.5 | 22.1 | 22.7 | 23.2 | 23.8 | 24.3 |
| 47 | 52 | 18.6 | 19.3 | 19.9 | 20.6 | 21.2 | 21.8 | 22.4 | 22.9 | 23.4 | 23.9 |
| 48 | 53 | 18.4 | 19.1 | 19.7 | 20.4 | 21.0 | 21.5 | 22.1 | 22.6 | 23.1 | 23.5 |
| 49 | 54 | 18.2 | 18.9 | 19.5 | 20.1 | 20.7 | 21.2 | 21.7 | 22.2 | 22.7 | 23.1 |
| 50 | 55 | 18.0 | 18.7 | 19.3 | 19.8 | 20.4 | 20.9 | 21.4 | 21.9 | 22.3 | 22.7 |
| 51 | 56 | 17.8 | 18.4 | 19.0 | 19.6 | 20.1 | 20.6 | 21.1 | 21.5 | 21.9 | 22.3 |
| 52 | 57 | 17.6 | 18.2 | 18.7 | 19.3 | 19.8 | 20.2 | 20.7 | 21.1 | 21.5 | 21.8 |
| 53 | 58 | 17.4 | 17.9 | 18.5 | 19.0 | 19.4 | 19.9 | 20.3 | 20.7 | 21.0 | 21.3 |
| 54 | 59 | 17.1 | 17.7 | 18.2 | 18.7 | 19.1 | 19.5 | 19.9 | 20.2 | 20.6 | 20.8 |
| 55 | 60 | 16.9 | 17.4 | 17.9 | 18.3 | 18.7 | 19.1 | 19.5 | 19.8 | 20.1 | 20.3 |
| 56 | 61 | 16.6 | 17.1 | 17.5 | 18.0 | 18.4 | 18.7 | 19.0 | 19.3 | 19.6 | 19.8 |
| 57 | 62 | 16.3 | 16.8 | 17.2 | 17.6 | 18.0 | 18.3 | 18.6 | 18.9 | 19.1 | 19.3 |
| 58 | 63 | 16.0 | 16.5 | 16.9 | 17.2 | 17.6 | 17.9 | 18.1 | 18.4 | 18.6 | 18.8 |
| 59 | 64 | 15.7 | 16.1 | 16.5 | 16.8 | 17.1 | 17.4 | 17.7 | 17.9 | 18.1 | 18.2 |
| 60 | 65 | 15.4 | 15.8 | 16.1 | 16.4 | 16.7 | 17.0 | 17.2 | 17.4 | 17.5 | 17.7 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 61 | 66 | 15.1 | 15.4 | 15.7 | 16.0 | 16.3 | 16.5 | 16.7 | 16.9 | 17.0 | 17.1 |
| 62 | 67 | 14.7 | 15.0 | 15.3 | 15.6 | 15.8 | 16.0 | 16.2 | 16.3 | 16.4 | 16.5 |
| 63 | 68 | 14.4 | 14.6 | 14.9 | 15.1 | 15.3 | 15.5 | 15.7 | 15.8 | 15.9 | 16.0 |
| 64 | 69 | 14.0 | 14.3 | 14.5 | 14.7 | 14.9 | 15.0 | 15.2 | 15.3 | 15.3 | 15.4 |
| 65 | 70 | 13.6 | 13.8 | 14.1 | 14.2 | 14.4 | 14.5 | 14.6 | 14.7 | 14.8 | 14.9 |
| 66 | 71 | 13.2 | 13.4 | 13.6 | 13.8 | 13.9 | 14.0 | 14.1 | 14.2 | 14.2 | 14.3 |
| 67 | 72 | 12.8 | 13.0 | 13.2 | 13.3 | 13.4 | 13.5 | 13.6 | 13.7 | 13.7 | 13.7 |
| 68 | 73 | 12.4 | 12.6 | 12.7 | 12.8 | 12.9 | 13.0 | 13.1 | 13.1 | 13.2 | 13.2 |
| 69 | 74 | 12.0 | 12.1 | 12.3 | 12.4 | 12.4 | 12.5 | 12.6 | 12.6 | 12.6 | 12.6 |
| 70 | 75 | 11.6 | 11.7 | 11.8 | 11.9 | 12.0 | 12.0 | 12.0 | 12.1 | 12.1 | 12.1 |
| 71 | 76 | 11.2 | 11.3 | 11.3 | 11.4 | 11.5 | 11.5 | 11.5 | 11.6 | 11.6 | |
| 72 | 77 | 10.7 | 10.8 | 10.9 | 10.9 | 11.0 | 11.0 | 11.0 | 11.0 | | |
| 73 | 78 | 10.3 | 10.4 | 10.4 | 10.5 | 10.5 | 10.5 | 10.5 | | | |
| 74 | 79 | 9.9 | 9.9 | 10.0 | 10.0 | 10.1 | 10.1 | | | | |
| 75 | 80 | 9.5 | 9.5 | 9.6 | 9.6 | 9.6 | | | | | |
| 76 | 81 | 9.1 | 9.1 | 9.1 | 9.1 | | | | | | |
| 77 | 82 | 8.6 | 8.7 | 8.7 | | | | | | | |
| 78 | 83 | 8.2 | 8.3 | | | | | | | | |
| 79 | 84 | 7.8 | | | | | | | | | |

Footnote to Table IV:

[1] The multiples in this table are not applicable to annuities for a term certain; for such cases see paragraph (c) of § 1.72–5.

TABLE V—ORDINARY LIFE ANNUITIES ONE LIFE—EXPECTED RETURN MULTIPLES

| Age | Multiple |
|---|---|
| 5 | 76.6 |
| 6 | 75.6 |
| 7 | 74.7 |
| 8 | 73.7 |
| 9 | 72.7 |
| 10 | 71.7 |
| 11 | 70.7 |
| 12 | 69.7 |
| 13 | 68.8 |
| 14 | 67.8 |
| 15 | 66.8 |
| 16 | 65.8 |
| 17 | 64.8 |
| 18 | 63.9 |
| 19 | 62.9 |
| 20 | 61.9 |
| 21 | 60.9 |
| 22 | 59.9 |
| 23 | 59.0 |
| 24 | 58.0 |
| 25 | 57.0 |
| 26 | 56.0 |
| 27 | 55.1 |
| 28 | 54.1 |
| 29 | 53.1 |
| 30 | 52.2 |
| 31 | 51.2 |
| 32 | 50.2 |
| 33 | 49.3 |
| 34 | 48.3 |
| 35 | 47.3 |
| 36 | 46.4 |
| 37 | 45.4 |
| 38 | 44.4 |
| 39 | 43.5 |
| 40 | 42.5 |
| 41 | 41.5 |
| 42 | 40.6 |
| 43 | 39.6 |
| 44 | 38.7 |
| 45 | 37.7 |
| 46 | 36.8 |
| 47 | 35.9 |
| 48 | 34.9 |
| 49 | 34.0 |
| 50 | 33.1 |
| 51 | 32.2 |
| 52 | 31.3 |
| 53 | 30.4 |
| 54 | 29.5 |
| 55 | 28.6 |
| 56 | 27.7 |
| 57 | 26.8 |
| 58 | 25.9 |
| 59 | 25.0 |
| 60 | 24.2 |
| 61 | 23.3 |
| 62 | 22.5 |
| 63 | 21.6 |
| 64 | 20.8 |
| 65 | 20.0 |
| 66 | 19.2 |
| 67 | 18.4 |
| 68 | 17.6 |
| 69 | 16.8 |
| 70 | 16.0 |
| 71 | 15.3 |
| 72 | 14.6 |
| 73 | 13.9 |
| 74 | 13.2 |
| 75 | 12.5 |
| 76 | 11.9 |
| 77 | 11.2 |
| 78 | 10.6 |
| 79 | 10.0 |
| 80 | 9.5 |
| 81 | 8.9 |
| 82 | 8.4 |
| 83 | 7.9 |
| 84 | 7.4 |
| 85 | 6.9 |
| 86 | 6.5 |
| 87 | 6.1 |
| 88 | 5.7 |
| 89 | 5.3 |
| 90 | 5.0 |
| 91 | 4.7 |
| 92 | 4.4 |
| 93 | 4.1 |
| 94 | 3.9 |
| 95 | 3.7 |
| 96 | 3.4 |
| 97 | 3.2 |
| 98 | 3.0 |
| 99 | 2.8 |
| 100 | 2.7 |
| 101 | 2.5 |
| 102 | 2.3 |
| 103 | 2.1 |
| 104 | 1.9 |
| 105 | 1.8 |
| 106 | 1.6 |
| 107 | 1.4 |
| 108 | 1.3 |
| 109 | 1.1 |
| 110 | 1.0 |
| 111 | .9 |
| 112 | .8 |
| 113 | .7 |
| 114 | .6 |
| 115 | .5 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
|---|---|---|---|---|---|---|---|---|---|---|
| 5 | 83.8 | 83.3 | 82.8 | 82.4 | 82.0 | 81.6 | 81.2 | 80.9 | 80.6 | 80.3 |
| 6 | 83.3 | 82.8 | 82.3 | 81.8 | 81.4 | 81.0 | 80.6 | 80.3 | 79.9 | 79.6 |
| 7 | 82.8 | 82.3 | 81.8 | 81.3 | 80.9 | 80.4 | 80.0 | 79.6 | 79.3 | 78.9 |
| 8 | 82.4 | 81.8 | 81.3 | 80.8 | 80.3 | 79.9 | 79.4 | 79.0 | 78.6 | 78.3 |
| 9 | 82.0 | 81.4 | 80.9 | 80.3 | 79.8 | 79.3 | 78.9 | 78.4 | 78.0 | 77.6 |
| 10 | 81.6 | 81.0 | 80.4 | 79.9 | 79.3 | 78.8 | 78.3 | 77.9 | 77.4 | 77.0 |
| 11 | 81.2 | 80.6 | 80.0 | 79.4 | 78.9 | 78.3 | 77.8 | 77.3 | 76.9 | 76.4 |
| 12 | 80.9 | 80.3 | 79.6 | 79.0 | 78.4 | 77.9 | 77.3 | 76.8 | 76.3 | 75.9 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
|---|---|---|---|---|---|---|---|---|---|---|
| 13 | 80.6 | 79.9 | 79.3 | 78.6 | 78.0 | 77.4 | 76.9 | 76.3 | 75.8 | 75.3 |
| 14 | 80.3 | 79.6 | 78.9 | 78.3 | 77.6 | 77.0 | 76.4 | 75.9 | 75.3 | 74.8 |
| 15 | 80.0 | 79.3 | 78.6 | 77.9 | 77.3 | 76.6 | 76.0 | 75.4 | 74.9 | 74.3 |
| 16 | 79.8 | 79.0 | 78.3 | 77.6 | 76.9 | 76.3 | 75.6 | 75.0 | 74.4 | 73.9 |
| 17 | 79.5 | 78.8 | 78.0 | 77.3 | 76.6 | 75.9 | 75.3 | 74.6 | 74.0 | 73.4 |
| 18 | 79.3 | 78.5 | 77.8 | 77.0 | 76.3 | 75.6 | 74.9 | 74.3 | 73.6 | 73.0 |
| 19 | 79.1 | 78.3 | 77.5 | 76.8 | 76.0 | 75.3 | 74.6 | 73.9 | 73.3 | 72.6 |
| 20 | 78.9 | 78.1 | 77.3 | 76.5 | 75.8 | 75.0 | 74.3 | 73.6 | 72.9 | 72.3 |
| 21 | 78.7 | 77.9 | 77.1 | 76.3 | 75.5 | 74.8 | 74.0 | 73.3 | 72.6 | 71.9 |
| 22 | 78.6 | 77.7 | 76.9 | 76.1 | 75.3 | 74.5 | 73.8 | 73.0 | 72.3 | 71.6 |
| 23 | 78.4 | 77.6 | 76.7 | 75.9 | 75.1 | 74.3 | 73.5 | 72.8 | 72.0 | 71.3 |
| 24 | 78.3 | 77.4 | 76.6 | 75.7 | 74.9 | 74.1 | 73.3 | 72.6 | 71.8 | 71.1 |
| 25 | 78.2 | 77.3 | 76.4 | 75.6 | 74.8 | 73.9 | 73.1 | 72.3 | 71.6 | 70.8 |
| 26 | 78.0 | 77.2 | 76.3 | 75.4 | 74.6 | 73.8 | 72.9 | 72.1 | 71.3 | 70.6 |
| 27 | 77.9 | 77.1 | 76.2 | 75.3 | 74.4 | 73.6 | 72.8 | 71.9 | 71.1 | 70.3 |
| 28 | 77.8 | 76.9 | 76.1 | 75.2 | 74.3 | 73.4 | 72.6 | 71.8 | 70.9 | 70.1 |
| 29 | 77.7 | 76.8 | 76.0 | 75.1 | 74.2 | 73.3 | 72.5 | 71.6 | 70.8 | 70.0 |
| 30 | 77.7 | 76.8 | 75.9 | 75.0 | 74.1 | 73.2 | 72.3 | 71.5 | 70.6 | 69.8 |
| 31 | 77.6 | 76.7 | 75.8 | 74.9 | 74.0 | 73.1 | 72.2 | 71.3 | 70.5 | 69.6 |
| 32 | 77.5 | 76.6 | 75.7 | 74.8 | 73.9 | 73.0 | 72.1 | 71.2 | 70.3 | 69.5 |
| 33 | 77.5 | 76.5 | 75.6 | 74.7 | 73.8 | 72.9 | 72.0 | 71.1 | 70.2 | 69.3 |
| 34 | 77.4 | 76.5 | 75.5 | 74.6 | 73.7 | 72.8 | 71.9 | 71.0 | 70.1 | 69.2 |
| 35 | 77.3 | 76.4 | 75.5 | 74.5 | 73.6 | 72.7 | 71.8 | 70.9 | 70.0 | 69.1 |
| 36 | 77.3 | 76.3 | 75.4 | 74.5 | 73.5 | 72.6 | 71.7 | 70.8 | 69.9 | 69.0 |
| 37 | 77.2 | 76.3 | 75.4 | 74.4 | 73.5 | 72.6 | 71.6 | 70.7 | 69.8 | 68.9 |
| 38 | 77.2 | 76.2 | 75.3 | 74.4 | 73.4 | 72.5 | 71.6 | 70.6 | 69.7 | 68.8 |
| 39 | 77.2 | 76.2 | 75.3 | 74.3 | 73.4 | 72.4 | 71.5 | 70.6 | 69.6 | 68.7 |
| 40 | 77.1 | 76.2 | 75.2 | 74.3 | 73.3 | 72.4 | 71.4 | 70.5 | 69.6 | 68.6 |
| 41 | 77.1 | 76.1 | 75.2 | 74.2 | 73.3 | 72.3 | 71.4 | 70.4 | 69.5 | 68.6 |
| 42 | 77.0 | 76.1 | 75.1 | 74.2 | 73.2 | 72.3 | 71.3 | 70.4 | 69.4 | 68.5 |
| 43 | 77.0 | 76.1 | 75.1 | 74.1 | 73.2 | 72.2 | 71.3 | 70.3 | 69.4 | 68.5 |
| 44 | 77.0 | 76.0 | 75.1 | 74.1 | 73.1 | 72.2 | 71.2 | 70.3 | 69.3 | 68.4 |
| 45 | 77.0 | 76.0 | 75.0 | 74.1 | 73.1 | 72.2 | 71.2 | 70.2 | 69.3 | 68.4 |
| 46 | 76.9 | 76.0 | 75.0 | 74.0 | 73.1 | 72.1 | 71.2 | 70.2 | 69.3 | 68.3 |
| 47 | 76.9 | 75.9 | 75.0 | 74.0 | 73.1 | 72.1 | 71.1 | 70.2 | 69.2 | 68.3 |
| 48 | 76.9 | 75.9 | 75.0 | 74.0 | 73.0 | 72.1 | 71.1 | 70.1 | 69.2 | 68.2 |
| 49 | 76.9 | 75.9 | 74.9 | 74.0 | 73.0 | 72.0 | 71.1 | 70.1 | 69.1 | 68.2 |
| 50 | 76.9 | 75.9 | 74.9 | 73.9 | 73.0 | 72.0 | 71.0 | 70.1 | 69.1 | 68.2 |
| 51 | 76.8 | 75.9 | 74.9 | 73.9 | 73.0 | 72.0 | 71.0 | 70.1 | 69.1 | 68.1 |
| 52 | 76.8 | 75.9 | 74.9 | 73.9 | 72.9 | 72.0 | 71.0 | 70.0 | 69.1 | 68.1 |
| 53 | 76.8 | 75.8 | 74.9 | 73.9 | 72.9 | 71.9 | 71.0 | 70.0 | 69.0 | 68.1 |
| 54 | 76.8 | 75.8 | 74.8 | 73.9 | 72.9 | 71.9 | 71.0 | 70.0 | 69.0 | 68.1 |
| 55 | 76.8 | 75.8 | 74.8 | 73.9 | 72.9 | 71.9 | 70.9 | 70.0 | 69.0 | 68.0 |
| 56 | 76.8 | 75.8 | 74.8 | 73.8 | 72.9 | 71.9 | 70.9 | 69.9 | 69.0 | 68.0 |
| 57 | 76.8 | 75.8 | 74.8 | 73.8 | 72.9 | 71.9 | 70.9 | 69.9 | 69.0 | 68.0 |
| 58 | 76.8 | 75.8 | 74.8 | 73.8 | 72.8 | 71.9 | 70.9 | 69.9 | 68.9 | 68.0 |
| 59 | 76.7 | 75.8 | 74.8 | 73.8 | 72.8 | 71.9 | 70.9 | 69.9 | 68.9 | 68.0 |
| 60 | 76.7 | 75.8 | 74.8 | 73.8 | 72.8 | 71.8 | 70.9 | 69.9 | 68.9 | 67.9 |
| 61 | 76.7 | 75.7 | 74.8 | 73.8 | 72.8 | 71.8 | 70.9 | 69.9 | 68.9 | 67.9 |
| 62 | 76.7 | 75.7 | 74.8 | 73.8 | 72.8 | 71.8 | 70.8 | 69.9 | 68.9 | 67.9 |
| 63 | 76.7 | 75.7 | 74.8 | 73.8 | 72.8 | 71.8 | 70.8 | 69.9 | 68.9 | 67.9 |
| 64 | 76.7 | 75.7 | 74.7 | 73.8 | 72.8 | 71.8 | 70.8 | 69.8 | 68.9 | 67.9 |
| 65 | 76.7 | 75.7 | 74.7 | 73.8 | 72.8 | 71.8 | 70.8 | 69.8 | 68.9 | 67.9 |
| 66 | 76.7 | 75.7 | 74.7 | 73.7 | 72.8 | 71.8 | 70.8 | 69.8 | 68.9 | 67.9 |
| 67 | 76.7 | 75.7 | 74.7 | 73.7 | 72.8 | 71.8 | 70.8 | 69.8 | 68.8 | 67.9 |
| 68 | 76.7 | 75.7 | 74.7 | 73.7 | 72.8 | 71.8 | 70.8 | 69.8 | 68.8 | 67.9 |
| 69 | 76.7 | 75.7 | 74.7 | 73.7 | 72.7 | 71.8 | 70.8 | 69.8 | 68.8 | 67.8 |
| 70 | 76.7 | 75.7 | 74.7 | 73.7 | 72.7 | 71.8 | 70.8 | 69.8 | 68.8 | 67.8 |
| 71 | 76.7 | 75.7 | 74.7 | 73.7 | 72.7 | 71.8 | 70.8 | 69.8 | 68.8 | 67.8 |
| 72 | 76.7 | 75.7 | 74.7 | 73.7 | 72.7 | 71.8 | 70.8 | 69.8 | 68.8 | 67.8 |
| 73 | 76.7 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.8 | 69.8 | 68.8 | 67.8 |
| 74 | 76.7 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.8 | 69.8 | 68.8 | 67.8 |
| 75 | 76.7 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.8 | 69.8 | 68.8 | 67.8 |
| 76 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.8 | 69.8 | 68.8 | 67.8 |
| 77 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.8 | 69.8 | 68.8 | 67.8 |
| 78 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 79 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 80 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 81 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 82 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 83 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
|---|---|---|---|---|---|---|---|---|---|---|
| 84 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 85 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 86 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 87 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 88 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.8 | 68.8 | 67.8 |
| 89 | 76.6 | 75.7 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 90 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 91 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 92 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 93 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 94 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 95 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 96 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 97 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 98 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 99 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 100 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 101 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 102 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 103 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 104 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 105 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 106 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 107 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 108 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 109 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 110 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 111 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 112 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 113 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 114 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |
| 115 | 76.6 | 75.6 | 74.7 | 73.7 | 72.7 | 71.7 | 70.7 | 69.7 | 68.8 | 67.8 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|
| 15 | 73.8 | 73.3 | 72.9 | 72.4 | 72.0 | 71.6 | 71.3 | 70.9 | 70.6 | 70.3 |
| 16 | 73.3 | 72.8 | 72.3 | 71.9 | 71.4 | 71.0 | 70.7 | 70.3 | 70.0 | 69.6 |
| 17 | 72.9 | 72.3 | 71.8 | 71.3 | 70.9 | 70.5 | 70.0 | 69.7 | 69.3 | 69.0 |
| 18 | 72.4 | 71.9 | 71.3 | 70.8 | 70.4 | 69.0 | 69.5 | 69.9 | 68.7 | 68.3 |
| 19 | 72.0 | 71.4 | 70.9 | 70.4 | 69.8 | 69.4 | 68.9 | 68.5 | 68.1 | 67.7 |
| 20 | 71.6 | 71.0 | 70.5 | 69.9 | 69.4 | 68.8 | 68.4 | 67.9 | 67.5 | 67.1 |
| 21 | 71.3 | 70.7 | 70.0 | 69.5 | 68.9 | 68.4 | 67.9 | 67.4 | 66.9 | 66.5 |
| 22 | 70.9 | 70.3 | 69.7 | 69.0 | 68.5 | 67.9 | 67.4 | 66.9 | 66.4 | 65.9 |
| 23 | 70.6 | 70.0 | 69.3 | 68.7 | 68.1 | 67.5 | 66.9 | 66.4 | 65.9 | 65.4 |
| 24 | 70.3 | 69.6 | 69.0 | 68.3 | 67.7 | 67.1 | 66.5 | 65.9 | 65.4 | 64.9 |
| 25 | 70.1 | 69.3 | 68.6 | 68.0 | 67.3 | 66.7 | 66.1 | 65.5 | 64.9 | 64.4 |
| 26 | 69.8 | 69.1 | 68.3 | 67.6 | 67.0 | 66.3 | 65.7 | 65.1 | 64.5 | 63.9 |
| 27 | 69.6 | 68.8 | 68.1 | 67.3 | 66.7 | 66.0 | 65.3 | 64.7 | 64.1 | 63.5 |
| 28 | 69.3 | 68.6 | 67.8 | 67.1 | 66.4 | 65.7 | 65.0 | 64.3 | 63.7 | 63.1 |
| 29 | 69.1 | 68.4 | 67.6 | 66.8 | 66.1 | 65.4 | 64.7 | 64.0 | 63.3 | 62.7 |
| 30 | 69.0 | 68.2 | 67.4 | 66.6 | 65.8 | 65.1 | 64.4 | 63.7 | 63.0 | 62.3 |
| 31 | 68.8 | 68.0 | 67.2 | 66.4 | 65.6 | 64.8 | 64.1 | 63.4 | 62.7 | 62.0 |
| 32 | 68.6 | 67.8 | 67.0 | 66.2 | 65.4 | 64.6 | 63.8 | 63.1 | 62.4 | 61.7 |
| 33 | 68.5 | 67.6 | 66.8 | 66.0 | 65.2 | 64.4 | 63.6 | 62.8 | 62.1 | 61.4 |
| 34 | 68.3 | 67.5 | 66.6 | 65.8 | 65.0 | 64.2 | 63.4 | 62.6 | 61.9 | 61.1 |
| 35 | 68.2 | 67.4 | 66.5 | 65.6 | 64.8 | 64.0 | 63.2 | 62.4 | 61.6 | 60.9 |
| 36 | 68.1 | 67.2 | 66.4 | 65.5 | 64.7 | 63.8 | 63.0 | 62.2 | 61.4 | 60.6 |
| 37 | 68.0 | 67.1 | 66.2 | 65.4 | 64.5 | 63.7 | 62.8 | 62.0 | 61.2 | 60.4 |
| 38 | 67.9 | 67.0 | 66.1 | 65.2 | 64.4 | 63.5 | 62.7 | 61.8 | 61.0 | 60.2 |
| 39 | 67.8 | 66.9 | 66.0 | 65.1 | 64.2 | 63.4 | 62.5 | 61.7 | 60.8 | 60.0 |
| 40 | 67.7 | 66.8 | 65.9 | 65.0 | 64.1 | 63.3 | 62.4 | 61.5 | 60.7 | 59.9 |
| 41 | 67.7 | 66.7 | 65.8 | 64.9 | 64.0 | 63.1 | 62.3 | 61.4 | 60.5 | 59.7 |
| 42 | 67.6 | 66.7 | 65.7 | 64.8 | 63.9 | 63.0 | 62.2 | 61.3 | 60.4 | 59.6 |
| 43 | 67.5 | 66.6 | 65.7 | 64.8 | 63.8 | 62.9 | 62.1 | 61.2 | 60.3 | 59.4 |
| 44 | 67.5 | 66.5 | 65.6 | 64.7 | 63.8 | 62.9 | 62.0 | 61.1 | 60.2 | 59.3 |
| 45 | 67.4 | 66.5 | 65.5 | 64.6 | 63.7 | 62.8 | 61.9 | 61.0 | 60.1 | 59.2 |
| 46 | 67.4 | 66.4 | 65.4 | 64.6 | 63.6 | 62.7 | 61.8 | 60.9 | 60.0 | 59.1 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|
| 47 | 67.3 | 66.4 | 65.4 | 64.5 | 63.6 | 62.6 | 61.7 | 60.8 | 59.9 | 59.0 |
| 48 | 67.3 | 66.3 | 65.4 | 64.4 | 63.5 | 62.6 | 61.6 | 60.7 | 59.8 | 58.9 |
| 49 | 67.2 | 66.3 | 65.3 | 64.4 | 63.5 | 62.5 | 61.6 | 60.7 | 59.7 | 58.8 |
| 50 | 67.2 | 66.2 | 65.3 | 64.3 | 63.4 | 62.5 | 61.5 | 60.6 | 59.7 | 58.8 |
| 51 | 67.2 | 66.2 | 65.3 | 64.3 | 63.4 | 62.4 | 61.5 | 60.5 | 59.6 | 58.7 |
| 52 | 67.1 | 66.2 | 65.2 | 64.3 | 63.3 | 62.4 | 61.4 | 60.5 | 59.6 | 58.6 |
| 53 | 67.1 | 66.2 | 65.2 | 64.2 | 63.3 | 62.3 | 61.4 | 60.4 | 59.5 | 58.6 |
| 54 | 67.1 | 66.1 | 65.2 | 64.2 | 63.2 | 62.3 | 61.3 | 60.4 | 59.5 | 58.5 |
| 55 | 67.1 | 66.1 | 65.1 | 64.2 | 63.2 | 62.3 | 61.3 | 60.4 | 59.4 | 58.5 |
| 56 | 67.0 | 66.1 | 65.1 | 64.1 | 63.2 | 62.2 | 61.3 | 60.3 | 59.4 | 58.4 |
| 57 | 67.0 | 66.1 | 65.1 | 64.1 | 63.2 | 62.2 | 61.2 | 60.3 | 59.3 | 58.4 |
| 58 | 67.0 | 66.0 | 65.1 | 64.1 | 63.1 | 62.2 | 61.2 | 60.3 | 59.3 | 58.4 |
| 59 | 67.0 | 66.0 | 65.0 | 64.1 | 63.1 | 62.1 | 61.2 | 60.2 | 59.3 | 58.3 |
| 60 | 67.0 | 66.0 | 65.0 | 64.1 | 63.1 | 62.1 | 61.2 | 60.2 | 59.2 | 58.3 |
| 61 | 67.0 | 66.0 | 65.0 | 64.0 | 63.1 | 62.1 | 61.1 | 60.2 | 59.2 | 58.3 |
| 62 | 66.9 | 66.0 | 65.0 | 64.0 | 63.1 | 62.1 | 61.1 | 60.2 | 59.2 | 58.2 |
| 63 | 66.9 | 66.0 | 65.0 | 64.0 | 63.0 | 62.1 | 61.1 | 60.1 | 59.2 | 58.2 |
| 64 | 66.9 | 65.9 | 65.0 | 64.0 | 63.0 | 62.1 | 61.1 | 60.1 | 59.2 | 58.2 |
| 65 | 66.9 | 65.9 | 65.0 | 64.0 | 63.0 | 62.0 | 61.1 | 60.1 | 59.1 | 58.2 |
| 66 | 66.9 | 65.9 | 64.9 | 64.0 | 63.0 | 62.0 | 61.1 | 60.1 | 59.1 | 58.2 |
| 67 | 66.9 | 65.9 | 64.9 | 64.0 | 63.0 | 62.0 | 61.1 | 60.1 | 59.1 | 58.1 |
| 68 | 66.9 | 65.9 | 64.9 | 64.0 | 63.0 | 62.0 | 61.0 | 60.1 | 59.1 | 58.1 |
| 69 | 66.9 | 65.9 | 64.9 | 63.9 | 63.0 | 62.0 | 61.0 | 60.0 | 59.1 | 58.1 |
| 70 | 66.9 | 65.9 | 64.9 | 63.9 | 63.0 | 62.0 | 61.0 | 60.0 | 59.1 | 58.1 |
| 71 | 66.9 | 65.9 | 64.9 | 63.9 | 62.9 | 62.0 | 61.0 | 60.0 | 59.1 | 58.1 |
| 72 | 66.9 | 65.9 | 64.9 | 63.9 | 62.9 | 62.0 | 61.0 | 60.0 | 59.0 | 58.1 |
| 73 | 66.8 | 65.9 | 64.9 | 63.9 | 62.9 | 62.0 | 61.0 | 60.0 | 59.0 | 58.1 |
| 74 | 66.8 | 65.9 | 64.9 | 63.9 | 62.9 | 62.0 | 61.0 | 60.0 | 59.0 | 58.1 |
| 75 | 66.8 | 65.9 | 64.9 | 63.9 | 62.9 | 61.9 | 61.0 | 60.0 | 59.0 | 58.1 |
| 76 | 66.8 | 65.9 | 64.9 | 63.9 | 62.9 | 61.9 | 61.0 | 60.0 | 59.0 | 58.0 |
| 76 | 66.8 | 65.9 | 64.9 | 63.9 | 62.9 | 61.9 | 61.0 | 60.0 | 59.0 | 58.0 |
| 77 | 66.8 | 65.9 | 64.9 | 63.9 | 63.9 | 62.9 | 61.0 | 60.0 | 59.0 | 58.0 |
| 78 | 66.8 | 65.8 | 64.9 | 63.9 | 62.9 | 61.9 | 61.0 | 60.0 | 59.0 | 58.0 |
| 79 | 66.8 | 65.8 | 64.9 | 63.9 | 62.9 | 61.9 | 61.0 | 60.0 | 59.0 | 58.0 |
| 80 | 66.8 | 65.9 | 64.9 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 81 | 66.8 | 65.8 | 64.9 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 82 | 66.8 | 65.8 | 64.9 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 83 | 66.8 | 65.8 | 64.9 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 84 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 85 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 86 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 87 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 88 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 89 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 90 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 91 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 60.0 | 59.0 | 58.0 |
| 92 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 93 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 94 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 95 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 96 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 97 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 98 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 99 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 100 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 101 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 102 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 103 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 104 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 105 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 106 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 107 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 108 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 109 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 110 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 111 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 112 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 113 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 114 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |
| 115 | 66.8 | 65.8 | 64.8 | 63.9 | 62.9 | 61.9 | 60.9 | 59.9 | 59.0 | 58.0 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 |
|---|---|---|---|---|---|---|---|---|---|---|
| 25 | 63.9 | 63.4 | 62.9 | 62.5 | 62.1 | 61.7 | 61.3 | 61.0 | 60.7 | 60.4 |
| 26 | 63.4 | 62.9 | 62.4 | 61.9 | 61.5 | 61.1 | 60.7 | 60.4 | 60.0 | 59.7 |
| 27 | 62.9 | 62.4 | 61.9 | 61.4 | 60.9 | 60.5 | 60.1 | 59.7 | 59.4 | 59.0 |
| 28 | 62.5 | 61.9 | 61.4 | 60.9 | 60.4 | 60.0 | 59.5 | 59.1 | 58.7 | 58.4 |
| 29 | 62.1 | 61.5 | 60.9 | 60.4 | 59.9 | 59.4 | 59.0 | 58.5 | 58.1 | 57.7 |
| 30 | 61.7 | 61.1 | 60.5 | 60.0 | 59.4 | 58.9 | 58.4 | 58.0 | 57.5 | 57.1 |
| 31 | 61.3 | 60.7 | 60.1 | 59.5 | 59.0 | 58.4 | 57.9 | 57.4 | 57.0 | 56.5 |
| 32 | 61.0 | 60.4 | 59.7 | 59.1 | 58.5 | 58.0 | 57.4 | 56.9 | 56.4 | 56.0 |
| 33 | 60.7 | 60.0 | 59.4 | 58.7 | 58.1 | 57.5 | 57.0 | 56.4 | 55.9 | 55.5 |
| 34 | 60.4 | 59.7 | 59.0 | 58.4 | 57.7 | 57.1 | 56.5 | 56.0 | 55.5 | 54.9 |
| 35 | 60.1 | 59.4 | 58.7 | 58.0 | 57.4 | 56.7 | 56.1 | 55.6 | 55.0 | 54.5 |
| 36 | 59.9 | 59.1 | 58.4 | 57.7 | 57.0 | 56.4 | 55.8 | 55.1 | 54.6 | 54.0 |
| 37 | 59.6 | 58.9 | 58.1 | 57.4 | 56.7 | 56.0 | 55.4 | 54.8 | 54.2 | 53.6 |
| 38 | 59.4 | 58.6 | 57.9 | 57.9 | 56.4 | 55.7 | 55.1 | 54.4 | 53.8 | 53.2 |
| 39 | 59.2 | 58.4 | 57.7 | 56.9 | 56.2 | 55.4 | 54.7 | 54.1 | 53.4 | 52.8 |
| 40 | 59.0 | 58.2 | 57.4 | 56.7 | 55.9 | 55.2 | 54.5 | 53.8 | 53.1 | 52.4 |
| 41 | 58.9 | 58.0 | 57.2 | 56.4 | 55.7 | 54.9 | 54.2 | 53.5 | 52.8 | 52.1 |
| 42 | 58.7 | 57.9 | 57.1 | 56.2 | 55.5 | 54.7 | 53.9 | 53.2 | 52.5 | 51.8 |
| 43 | 58.6 | 57.7 | 56.9 | 56.1 | 55.3 | 54.5 | 53.7 | 52.9 | 52.2 | 51.5 |
| 44 | 58.4 | 57.6 | 56.7 | 55.9 | 55.1 | 54.3 | 53.5 | 52.7 | 52.0 | 51.2 |
| 45 | 58.3 | 57.4 | 56.6 | 55.7 | 54.9 | 54.1 | 53.3 | 52.5 | 51.7 | 51.0 |
| 46 | 58.2 | 57.3 | 56.5 | 55.6 | 54.8 | 53.9 | 53.1 | 52.3 | 51.5 | 50.7 |
| 47 | 58.1 | 57.2 | 56.3 | 55.5 | 54.6 | 53.8 | 52.9 | 52.1 | 51.3 | 50.5 |
| 48 | 58.0 | 57.1 | 56.2 | 55.3 | 54.5 | 53.6 | 52.8 | 51.9 | 51.1 | 50.3 |
| 49 | 57.9 | 57.0 | 56.1 | 55.2 | 54.4 | 53.5 | 52.6 | 51.8 | 51.0 | 50.1 |
| 50 | 57.8 | 56.9 | 56.0 | 55.1 | 54.2 | 53.4 | 52.5 | 51.7 | 50.8 | 50.0 |
| 51 | 57.8 | 56.9 | 55.9 | 55.0 | 54.1 | 53.3 | 52.4 | 51.5 | 50.7 | 49.8 |
| 52 | 57.7 | 56.8 | 55.9 | 55.0 | 54.1 | 53.2 | 52.3 | 51.4 | 50.5 | 49.7 |
| 53 | 57.6 | 56.7 | 55.8 | 54.9 | 54.0 | 53.1 | 52.2 | 51.3 | 50.4 | 49.6 |
| 54 | 57.6 | 56.7 | 55.7 | 54.8 | 53.9 | 53.0 | 52.1 | 51.2 | 50.3 | 49.4 |
| 55 | 57.5 | 56.6 | 55.7 | 54.7 | 53.8 | 52.9 | 52.0 | 51.1 | 40.2 | 49.3 |
| 56 | 57.5 | 56.5 | 55.6 | 54.7 | 53.8 | 52.8 | 51.9 | 51.0 | 50.1 | 49.2 |
| 57 | 57.4 | 56.5 | 55.6 | 54.6 | 53.7 | 52.8 | 51.9 | 50.9 | 50.0 | 49.1 |
| 58 | 57.4 | 56.5 | 55.5 | 54.6 | 53.6 | 52.7 | 51.8 | 50.9 | 50.0 | 49.1 |
| 59 | 57.4 | 56.4 | 55.5 | 54.5 | 53.6 | 52.7 | 51.7 | 50.8 | 49.9 | 49.0 |
| 60 | 57.3 | 56.4 | 55.4 | 54.5 | 53.6 | 52.6 | 51.7 | 50.8 | 49.8 | 48.9 |
| 61 | 57.3 | 56.4 | 55.4 | 54.5 | 53.5 | 52.6 | 51.6 | 50.7 | 49.8 | 48.9 |
| 62 | 57.3 | 56.3 | 55.4 | 54.4 | 53.5 | 52.5 | 51.6 | 50.7 | 49.7 | 48.8 |
| 63 | 57.3 | 56.3 | 55.3 | 54.4 | 53.4 | 52.5 | 51.6 | 50.6 | 49.7 | 48.7 |
| 64 | 57.2 | 56.3 | 55.3 | 54.4 | 53.4 | 52.5 | 51.5 | 50.6 | 49.6 | 48.7 |
| 65 | 57.2 | 56.3 | 55.3 | 54.3 | 53.4 | 52.4 | 51.5 | 50.5 | 49.6 | 48.7 |
| 66 | 57.2 | 56.2 | 55.3 | 54.3 | 53.4 | 52.4 | 51.5 | 50.5 | 49.6 | 48.6 |
| 67 | 57.2 | 56.2 | 55.3 | 54.3 | 53.3 | 52.4 | 51.4 | 50.5 | 49.5 | 48.6 |
| 68 | 57.2 | 56.2 | 55.2 | 54.3 | 53.3 | 52.4 | 51.4 | 50.4 | 49.5 | 48.6 |
| 69 | 57.1 | 56.2 | 55.2 | 54.3 | 53.3 | 52.3 | 51.4 | 50.4 | 49.5 | 48.5 |
| 70 | 57.1 | 56.2 | 55.2 | 54.2 | 53.3 | 52.3 | 51.4 | 50.4 | 49.4 | 48.5 |
| 71 | 57.1 | 56.2 | 55.2 | 54.2 | 53.3 | 52.3 | 51.3 | 50.4 | 49.4 | 48.5 |
| 72 | 57.1 | 56.1 | 55.2 | 54.2 | 53.2 | 52.3 | 51.3 | 50.4 | 49.4 | 48.5 |
| 73 | 57.1 | 56.1 | 55.2 | 54.2 | 53.2 | 52.3 | 51.3 | 50.3 | 49.4 | 48.4 |
| 74 | 57.1 | 56.1 | 55.2 | 54.2 | 53.2 | 52.3 | 51.3 | 50.3 | 49.4 | 48.4 |
| 75 | 57.1 | 56.1 | 55.1 | 54.2 | 53.2 | 52.2 | 51.3 | 50.3 | 49.4 | 48.4 |
| 76 | 57.1 | 56.1 | 55.1 | 54.2 | 53.2 | 52.2 | 51.3 | 50.3 | 49.3 | 48.4 |
| 77 | 57.1 | 56.1 | 55.1 | 54.2 | 53.2 | 52.2 | 51.3 | 50.3 | 49.3 | 48.4 |
| 78 | 57.1 | 56.1 | 55.1 | 54.2 | 53.2 | 52.2 | 51.3 | 50.3 | 49.3 | 48.4 |
| 79 | 57.1 | 56.1 | 55.1 | 54.1 | 53.2 | 52.2 | 51.2 | 50.3 | 49.3 | 48.4 |
| 80 | 57.1 | 56.1 | 55.1 | 54.1 | 53.2 | 52.2 | 51.2 | 50.3 | 49.3 | 48.3 |
| 81 | 57.0 | 56.1 | 55.1 | 54.1 | 53.2 | 52.2 | 51.2 | 50.3 | 49.3 | 48.3 |
| 82 | 57.0 | 56.1 | 55.1 | 54.1 | 53.2 | 52.2 | 51.2 | 50.3 | 49.3 | 48.3 |
| 83 | 57.0 | 56.1 | 55.1 | 54.1 | 53.2 | 52.2 | 51.2 | 50.3 | 49.3 | 48.3 |
| 84 | 57.0 | 56.1 | 55.1 | 54.1 | 53.2 | 52.2 | 51.2 | 50.3 | 49.3 | 48.3 |
| 85 | 57.0 | 56.1 | 55.1 | 54.1 | 53.2 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 86 | 57.0 | 56.1 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 87 | 57.0 | 56.1 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 88 | 57.0 | 56.1 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 89 | 57.0 | 56.1 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 90 | 57.0 | 56.1 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 91 | 57.0 | 56.1 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 92 | 57.0 | 56.1 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 93 | 57.0 | 56.1 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 94 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 95 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 |
|---|---|---|---|---|---|---|---|---|---|---|
| 96 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 97 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 98 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 99 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 100 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 101 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 102 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 103 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 104 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 105 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 106 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 107 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 108 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 109 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 110 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 111 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 112 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 113 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 114 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |
| 115 | 57.0 | 56.0 | 55.1 | 54.1 | 53.1 | 52.2 | 51.2 | 50.2 | 49.3 | 48.3 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 |
|---|---|---|---|---|---|---|---|---|---|---|
| 35 | 54.0 | 53.5 | 53.0 | 52.6 | 52.2 | 51.8 | 51.4 | 51.1 | 50.8 | 50.5 |
| 36 | 53.5 | 53.0 | 52.5 | 52.0 | 51.6 | 51.2 | 50.8 | 50.4 | 50.1 | 49.8 |
| 37 | 53.0 | 52.5 | 52.0 | 51.5 | 51.0 | 50.6 | 50.2 | 49.8 | 49.5 | 49.1 |
| 38 | 52.6 | 52.0 | 51.5 | 51.0 | 50.5 | 50.0 | 49.6 | 49.2 | 48.8 | 48.5 |
| 39 | 52.2 | 51.6 | 51.0 | 50.5 | 50.0 | 49.5 | 49.1 | 48.6 | 48.2 | 47.8 |
| 40 | 51.8 | 51.2 | 50.6 | 50.0 | 49.5 | 49.0 | 48.5 | 48.1 | 47.6 | 47.2 |
| 41 | 51.4 | 50.8 | 50.2 | 49.6 | 49.1 | 48.5 | 48.0 | 47.5 | 47.1 | 46.7 |
| 42 | 51.1 | 50.4 | 49.8 | 49.2 | 48.6 | 48.1 | 47.5 | 47.0 | 46.6 | 46.1 |
| 43 | 50.8 | 50.1 | 49.5 | 48.8 | 48.2 | 47.6 | 47.1 | 46.6 | 46.0 | 45.6 |
| 44 | 50.5 | 49.8 | 49.1 | 48.5 | 47.8 | 47.2 | 46.7 | 46.1 | 45.6 | 45.1 |
| 45 | 50.2 | 49.5 | 48.8 | 48.1 | 47.5 | 46.9 | 46.3 | 45.7 | 45.1 | 44.6 |
| 46 | 50.0 | 49.2 | 48.5 | 47.8 | 47.2 | 46.5 | 45.9 | 45.3 | 44.7 | 44.1 |
| 47 | 49.7 | 49.0 | 48.3 | 47.5 | 46.8 | 46.2 | 45.5 | 44.9 | 44.3 | 43.7 |
| 48 | 49.5 | 48.8 | 48.0 | 47.3 | 46.6 | 45.9 | 45.2 | 44.5 | 43.9 | 43.3 |
| 49 | 49.3 | 48.5 | 47.8 | 47.0 | 46.3 | 45.6 | 44.9 | 44.2 | 43.6 | 42.9 |
| 50 | 49.2 | 48.4 | 47.6 | 46.8 | 46.0 | 45.3 | 44.6 | 43.9 | 43.2 | 42.6 |
| 51 | 49.0 | 48.2 | 47.4 | 46.6 | 45.8 | 45.1 | 44.3 | 43.6 | 42.9 | 44.2 |
| 52 | 48.8 | 48.0 | 47.2 | 46.4 | 45.6 | 44.8 | 44.1 | 43.3 | 42.6 | 41.9 |
| 53 | 48.7 | 47.9 | 47.0 | 46.2 | 45.4 | 44.6 | 43.9 | 43.1 | 42.4 | 41.7 |
| 54 | 48.6 | 47.7 | 46.9 | 46.0 | 45.2 | 44.4 | 43.6 | 42.9 | 42.1 | 41.4 |
| 55 | 48.5 | 47.6 | 46.7 | 45.9 | 45.1 | 44.2 | 43.4 | 42.7 | 41.9 | 41.2 |
| 56 | 48.3 | 47.5 | 46.6 | 45.8 | 44.9 | 44.1 | 43.3 | 42.5 | 41.7 | 40.9 |
| 57 | 48.3 | 47.4 | 46.5 | 45.6 | 44.8 | 43.9 | 43.1 | 42.3 | 41.5 | 40.7 |
| 58 | 48.2 | 47.3 | 46.4 | 45.5 | 44.7 | 43.8 | 43.0 | 42.1 | 41.3 | 40.5 |
| 59 | 48.1 | 47.2 | 46.3 | 45.4 | 44.5 | 43.7 | 42.8 | 42.0 | 41.2 | 40.4 |
| 60 | 48.0 | 47.1 | 46.2 | 45.3 | 44.4 | 43.6 | 42.7 | 41.9 | 41.0 | 40.2 |
| 61 | 47.9 | 47.0 | 46.1 | 45.2 | 44.3 | 43.5 | 42.6 | 41.7 | 40.9 | 40.0 |
| 62 | 47.9 | 47.0 | 46.0 | 45.1 | 44.2 | 43.4 | 42.5 | 41.6 | 40.8 | 39.9 |
| 63 | 47.8 | 46.9 | 46.0 | 45.1 | 44.2 | 43.3 | 42.4 | 41.5 | 40.6 | 39.8 |
| 64 | 47.8 | 46.8 | 45.9 | 45.0 | 44.1 | 43.2 | 42.3 | 41.4 | 40.5 | 39.7 |
| 65 | 47.7 | 46.8 | 45.9 | 44.9 | 44.0 | 43.1 | 42.2 | 41.3 | 40.4 | 39.6 |
| 66 | 47.7 | 46.7 | 45.8 | 44.9 | 44.0 | 43.1 | 42.2 | 41.3 | 40.4 | 39.5 |
| 67 | 47.6 | 46.7 | 45.8 | 44.8 | 43.9 | 43.0 | 42.1 | 41.2 | 40.3 | 39.4 |
| 68 | 47.6 | 46.7 | 45.7 | 44.8 | 43.9 | 42.9 | 42.0 | 41.1 | 40.2 | 39.3 |
| 69 | 47.6 | 46.6 | 45.7 | 44.8 | 43.8 | 42.9 | 42.0 | 41.1 | 40.2 | 39.3 |
| 70 | 47.5 | 46.6 | 45.7 | 44.7 | 43.8 | 42.9 | 41.9 | 41.0 | 40.1 | 39.2 |
| 71 | 47.5 | 46.6 | 45.6 | 44.7 | 43.8 | 42.8 | 41.9 | 41.0 | 40.1 | 39.1 |
| 72 | 47.5 | 46.6 | 45.6 | 44.7 | 43.7 | 42.8 | 41.9 | 40.9 | 40.0 | 39.1 |
| 73 | 47.5 | 46.5 | 45.6 | 44.6 | 43.7 | 42.8 | 41.8 | 40.9 | 40.0 | 39.0 |
| 74 | 47.5 | 46.5 | 45.6 | 44.6 | 43.7 | 42.7 | 41.8 | 40.9 | 39.9 | 39.0 |
| 75 | 47.4 | 46.5 | 45.5 | 44.6 | 43.6 | 42.7 | 41.8 | 40.8 | 39.9 | 39.0 |
| 76 | 47.4 | 46.5 | 45.5 | 44.6 | 43.6 | 42.7 | 41.7 | 40.8 | 39.9 | 38.9 |
| 77 | 47.4 | 46.5 | 45.5 | 44.6 | 43.6 | 42.7 | 41.7 | 40.8 | 39.8 | 38.9 |
| 78 | 47.4 | 46.4 | 45.5 | 44.5 | 43.6 | 42.6 | 41.7 | 40.7 | 39.8 | 38.9 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 |
|---|---|---|---|---|---|---|---|---|---|---|
| 79 | 47.4 | 46.4 | 45.5 | 44.5 | 43.6 | 42.6 | 41.7 | 40.7 | 39.8 | 38.9 |
| 80 | 47.4 | 46.4 | 45.5 | 44.5 | 43.6 | 42.6 | 41.7 | 40.7 | 39.8 | 38.8 |
| 81 | 47.4 | 46.4 | 45.5 | 44.5 | 43.5 | 42.6 | 41.6 | 40.7 | 39.8 | 38.8 |
| 82 | 47.4 | 46.4 | 45.4 | 44.5 | 43.5 | 42.6 | 41.6 | 40.7 | 39.7 | 38.8 |
| 83 | 47.4 | 46.4 | 45.4 | 44.5 | 43.5 | 42.6 | 41.6 | 40.7 | 39.7 | 38.8 |
| 84 | 47.4 | 46.4 | 45.4 | 44.5 | 43.5 | 42.6 | 41.6 | 40.7 | 39.7 | 38.8 |
| 85 | 47.4 | 46.4 | 45.4 | 44.5 | 43.5 | 42.6 | 41.6 | 40.7 | 39.7 | 38.8 |
| 86 | 47.3 | 46.4 | 45.4 | 44.5 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 38.8 |
| 87 | 47.3 | 46.4 | 45.4 | 44.5 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 38.7 |
| 88 | 47.3 | 46.4 | 45.4 | 44.5 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 38.7 |
| 89 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 38.7 |
| 90 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 38.7 |
| 91 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 39.7 |
| 92 | 47.3 | 46.4 | 45.4 | 44.4 | 44.4 | 43.5 | 42.5 | 41.6 | 40.6 | 38.7 |
| 93 | 47.3 | 46.4 | 45.4 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 39.7 | 38.7 |
| 94 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 38.7 |
| 95 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 38.7 |
| 96 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.6 | 40.6 | 39.7 | 38.7 |
| 97 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.6 | 40.6 | 39.6 | 38.7 |
| 98 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.6 | 40.6 | 39.6 | 38.7 |
| 99 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 100 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 101 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 102 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 103 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 104 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 105 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 106 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 107 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 108 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 109 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 110 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 111 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 112 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 113 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 114 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 114 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |
| 115 | 47.3 | 46.4 | 45.4 | 44.4 | 43.5 | 42.5 | 41.5 | 40.6 | 39.6 | 38.7 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 |
|---|---|---|---|---|---|---|---|---|---|---|
| 45 | 44.1 | 43.6 | 43.2 | 42.7 | 42.3 | 42.0 | 41.6 | 41.3 | 41.0 | 40.7 |
| 46 | 43.6 | 43.1 | 42.6 | 42.2 | 41.8 | 41.4 | 41.0 | 40.6 | 40.3 | 40.0 |
| 47 | 43.2 | 42.6 | 42.1 | 41.7 | 41.2 | 40.8 | 40.4 | 40.0 | 39.7 | 39.3 |
| 48 | 42.7 | 42.2 | 41.7 | 41.2 | 40.7 | 40.2 | 39.8 | 39.4 | 39.0 | 38.7 |
| 49 | 42.3 | 41.8 | 41.2 | 40.7 | 40.2 | 39.7 | 39.3 | 38.8 | 38.4 | 38.1 |
| 50 | 42.0 | 41.4 | 40.8 | 40.2 | 39.7 | 39.2 | 38.7 | 38.3 | 37.9 | 37.5 |
| 51 | 41.6 | 41.0 | 40.4 | 39.8 | 39.3 | 38.7 | 38.2 | 37.8 | 37.3 | 36.9 |
| 52 | 41.3 | 40.6 | 40.0 | 39.4 | 38.8 | 38.3 | 37.8 | 37.3 | 36.8 | 36.4 |
| 53 | 41.0 | 40.3 | 39.7 | 39.0 | 38.4 | 37.9 | 37.3 | 36.8 | 36.3 | 35.8 |
| 54 | 40.7 | 40.0 | 39.3 | 38.7 | 38.1 | 37.5 | 36.9 | 36.4 | 35.8 | 35.3 |
| 55 | 40.4 | 39.7 | 39.0 | 38.4 | 37.7 | 37.1 | 36.5 | 35.9 | 35.4 | 34.9 |
| 56 | 40.2 | 39.5 | 38.7 | 38.1 | 37.4 | 36.8 | 36.1 | 35.6 | 35.0 | 34.4 |
| 57 | 40.0 | 39.2 | 38.5 | 37.8 | 37.1 | 36.4 | 35.8 | 35.2 | 34.6 | 34.0 |
| 58 | 39.7 | 39.0 | 38.2 | 37.5 | 36.8 | 36.1 | 35.5 | 34.8 | 34.2 | 33.6 |
| 59 | 39.6 | 38.8 | 38.0 | 37.3 | 36.6 | 35.9 | 35.2 | 34.5 | 33.9 | 33.3 |
| 60 | 39.4 | 38.6 | 37.8 | 37.1 | 36.3 | 35.6 | 34.9 | 34.2 | 33.6 | 32.9 |
| 61 | 39.2 | 38.4 | 37.6 | 36.9 | 36.1 | 35.4 | 34.6 | 33.9 | 33.3 | 32.6 |
| 62 | 39.1 | 38.3 | 37.5 | 36.7 | 35.9 | 35.1 | 34.4 | 33.7 | 33.0 | 32.3 |
| 63 | 38.9 | 38.1 | 37.3 | 36.5 | 35.7 | 34.9 | 34.2 | 33.5 | 32.7 | 32.0 |
| 64 | 38.8 | 38.0 | 37.2 | 36.3 | 35.5 | 34.8 | 34.0 | 33.2 | 32.5 | 31.8 |
| 65 | 38.7 | 37.9 | 37.0 | 36.2 | 35.4 | 34.6 | 33.8 | 33.0 | 32.3 | 31.6 |
| 66 | 38.6 | 37.8 | 36.9 | 36.1 | 35.2 | 34.4 | 33.6 | 32.9 | 32.1 | 31.4 |
| 67 | 38.5 | 37.7 | 36.8 | 36.0 | 35.1 | 34.3 | 33.5 | 32.7 | 31.9 | 31.2 |
| 68 | 38.4 | 37.6 | 36.7 | 35.8 | 35.0 | 34.2 | 33.4 | 32.5 | 31.8 | 31.0 |
| 69 | 38.4 | 37.5 | 36.6 | 35.7 | 34.9 | 34.1 | 33.2 | 32.4 | 31.6 | 30.8 |
| 70 | 38.3 | 37.4 | 36.5 | 35.7 | 34.8 | 34.0 | 33.1 | 32.3 | 31.5 | 30.7 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 |
|---|---|---|---|---|---|---|---|---|---|---|
| 71 | 38.2 | 37.3 | 36.5 | 35.6 | 34.7 | 33.9 | 33.0 | 32.2 | 31.4 | 30.5 |
| 72 | 38.2 | 37.3 | 36.4 | 35.5 | 34.6 | 33.8 | 32.9 | 32.1 | 31.2 | 30.4 |
| 73 | 38.1 | 37.2 | 36.3 | 35.4 | 34.6 | 33.7 | 32.8 | 32.0 | 31.1 | 30.3 |
| 74 | 38.1 | 37.2 | 36.3 | 35.4 | 34.5 | 33.6 | 32.8 | 31.9 | 31.1 | 30.2 |
| 75 | 38.1 | 37.1 | 36.2 | 35.3 | 34.5 | 33.6 | 32.7 | 31.8 | 31.0 | 30.1 |
| 76 | 38.0 | 37.1 | 36.2 | 35.3 | 34.4 | 33.5 | 32.6 | 31.8 | 30.9 | 30.1 |
| 77 | 38.0 | 37.1 | 36.2 | 35.3 | 34.4 | 33.5 | 32.6 | 31.7 | 30.8 | 30.0 |
| 78 | 38.0 | 37.0 | 36.1 | 35.2 | 34.3 | 33.4 | 32.5 | 31.7 | 30.8 | 29.9 |
| 79 | 37.9 | 37.0 | 36.1 | 35.2 | 34.3 | 33.4 | 32.5 | 31.6 | 30.7 | 29.9 |
| 80 | 37.9 | 37.0 | 36.1 | 35.2 | 34.2 | 33.4 | 32.5 | 31.6 | 30.7 | 29.8 |
| 81 | 37.9 | 37.0 | 36.0 | 35.1 | 34.2 | 33.3 | 32.4 | 31.5 | 30.7 | 29.8 |
| 82 | 37.9 | 36.9 | 36.0 | 35.1 | 34.2 | 33.3 | 32.4 | 31.5 | 30.6 | 29.7 |
| 83 | 37.9 | 36.9 | 36.0 | 35.1 | 34.2 | 33.3 | 32.4 | 31.5 | 30.6 | 29.7 |
| 84 | 37.8 | 36.9 | 36.9 | 35.0 | 34.2 | 33.2 | 32.3 | 31.4 | 30.6 | 29.7 |
| 85 | 37.8 | 36.9 | 36.0 | 35.1 | 34.1 | 33.2 | 32.3 | 31.4 | 30.5 | 29.6 |
| 86 | 38.8 | 36.9 | 36.0 | 35.0 | 34.1 | 33.2 | 32.3 | 31.4 | 30.5 | 29.6 |
| 87 | 37.8 | 36.9 | 35.9 | 35.0 | 34.1 | 33.2 | 32.3 | 31.4 | 30.5 | 29.6 |
| 88 | 37.8 | 36.9 | 35.9 | 35.0 | 34.1 | 33.2 | 32.3 | 31.4 | 30.5 | 29.6 |
| 89 | 37.8 | 36.9 | 35.9 | 35.0 | 34.1 | 33.2 | 32.3 | 31.4 | 30.5 | 29.6 |
| 90 | 37.8 | 36.9 | 35.9 | 35.0 | 34.1 | 33.2 | 32.3 | 31.3 | 30.5 | 29.6 |
| 91 | 37.8 | 36.8 | 35.9 | 35.0 | 34.1 | 33.2 | 32.2 | 31.3 | 30.4 | 29.5 |
| 92 | 37.8 | 36.8 | 35.9 | 35.0 | 34.1 | 33.2 | 32.2 | 31.3 | 30.4 | 29.5 |
| 93 | 37.8 | 36.8 | 35.9 | 35.0 | 34.1 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 94 | 37.8 | 36.8 | 35.9 | 35.0 | 34.1 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 95 | 37.8 | 36.8 | 35.9 | 35.0 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 96 | 37.8 | 36.8 | 35.9 | 35.0 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 97 | 37.8 | 36.8 | 35.9 | 35.0 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 98 | 37.8 | 36.8 | 35.9 | 35.0 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 99 | 37.8 | 36.8 | 35.9 | 35.0 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 101 | 37.8 | 36.8 | 35.9 | 35.0 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 102 | 37.8 | 36.8 | 35.9 | 35.0 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 103 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 104 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 105 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 106 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 107 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 108 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 109 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 110 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 111 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 112 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 113 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 114 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |
| 115 | 37.7 | 36.8 | 35.9 | 34.9 | 34.0 | 33.1 | 32.2 | 31.3 | 30.4 | 29.5 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 |
|---|---|---|---|---|---|---|---|---|---|---|
| 55 | 34.4 | 33.9 | 33.5 | 33.1 | 32.7 | 32.3 | 32.0 | 31.7 | 31.4 | 31.1 |
| 56 | 33.9 | 33.4 | 33.0 | 32.5 | 32.1 | 31.7 | 31.4 | 31.0 | 30.7 | 30.4 |
| 57 | 33.5 | 33.0 | 32.5 | 32.0 | 31.6 | 31.2 | 30.8 | 30.4 | 30.1 | 29.8 |
| 58 | 33.1 | 32.5 | 32.0 | 31.5 | 31.1 | 30.6 | 30.2 | 29.9 | 29.5 | 29.2 |
| 59 | 32.7 | 32.1 | 31.6 | 31.1 | 30.6 | 30.1 | 29.7 | 29.3 | 28.9 | 28.6 |
| 60 | 32.3 | 31.7 | 31.2 | 30.6 | 30.1 | 29.7 | 29.2 | 28.8 | 28.4 | 28.0 |
| 61 | 32.0 | 31.4 | 30.8 | 30.2 | 29.7 | 29.2 | 28.7 | 28.3 | 27.8 | 27.4 |
| 62 | 31.7 | 31.0 | 30.4 | 29.9 | 29.3 | 28.8 | 28.3 | 27.8 | 27.3 | 26.9 |
| 63 | 31.4 | 30.7 | 30.1 | 29.5 | 28.9 | 28.4 | 27.8 | 27.3 | 26.9 | 26.4 |
| 64 | 31.1 | 30.4 | 29.8 | 29.2 | 28.6 | 28.0 | 27.4 | 26.9 | 26.4 | 25.9 |
| 65 | 30.9 | 30.2 | 29.5 | 28.9 | 28.2 | 27.6 | 27.1 | 26.5 | 26.0 | 25.5 |
| 66 | 30.6 | 29.9 | 29.2 | 28.6 | 27.9 | 27.3 | 26.7 | 26.1 | 25.6 | 25.1 |
| 67 | 30.4 | 29.7 | 29.0 | 28.3 | 27.6 | 27.0 | 26.4 | 25.8 | 25.2 | 24.7 |
| 68 | 30.2 | 29.5 | 28.8 | 28.1 | 27.4 | 26.7 | 26.1 | 25.5 | 24.9 | 24.3 |
| 69 | 30.1 | 29.3 | 28.6 | 27.8 | 27.1 | 26.5 | 25.8 | 25.2 | 24.6 | 24.0 |
| 70 | 29.9 | 29.1 | 28.4 | 27.6 | 26.9 | 26.2 | 25.6 | 24.9 | 24.3 | 23.7 |
| 71 | 29.7 | 29.0 | 28.2 | 27.5 | 26.7 | 26.0 | 25.3 | 24.7 | 24.0 | 23.4 |
| 72 | 29.6 | 28.8 | 28.1 | 27.3 | 26.5 | 25.8 | 25.1 | 24.4 | 23.8 | 23.1 |
| 73 | 29.5 | 28.7 | 27.9 | 27.1 | 26.4 | 25.6 | 24.9 | 24.2 | 23.5 | 22.9 |
| 74 | 29.4 | 28.6 | 27.8 | 27.0 | 26.2 | 25.5 | 24.7 | 24.0 | 23.3 | 22.7 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 |
|---|---|---|---|---|---|---|---|---|---|---|
| 75 | 29.3 | 28.5 | 27.7 | 26.9 | 26.1 | 25.3 | 24.6 | 23.8 | 23.1 | 22.4 |
| 76 | 29.2 | 28.4 | 27.6 | 26.8 | 26.0 | 25.2 | 24.4 | 23.7 | 23.0 | 22.3 |
| 77 | 29.1 | 28.3 | 27.5 | 26.7 | 25.9 | 25.1 | 24.3 | 23.6 | 22.8 | 22.1 |
| 78 | 29.1 | 28.2 | 27.4 | 26.6 | 25.8 | 25.0 | 24.2 | 23.4 | 22.7 | 21.9 |
| 79 | 29.0 | 28.2 | 27.3 | 26.5 | 25.7 | 24.9 | 24.1 | 23.3 | 22.6 | 21.8 |
| 80 | 29.0 | 28.1 | 27.3 | 26.4 | 25.6 | 24.8 | 24.0 | 23.2 | 22.4 | 21.7 |
| 81 | 28.9 | 28.1 | 27.2 | 26.4 | 25.5 | 24.7 | 23.9 | 23.1 | 22.3 | 21.6 |
| 82 | 28.9 | 28.0 | 27.2 | 26.3 | 25.5 | 24.6 | 23.8 | 23.0 | 22.3 | 21.5 |
| 83 | 28.8 | 28.0 | 27.1 | 26.3 | 25.4 | 24.6 | 23.8 | 23.0 | 22.2 | 21.4 |
| 84 | 28.8 | 27.9 | 27.1 | 26.2 | 25.4 | 24.5 | 23.7 | 22.9 | 22.1 | 21.3 |
| 85 | 28.8 | 27.9 | 27.0 | 26.2 | 25.3 | 24.5 | 23.7 | 22.8 | 22.0 | 21.3 |
| 86 | 28.7 | 27.9 | 27.0 | 26.1 | 25.3 | 24.5 | 23.6 | 22.8 | 22.0 | 21.2 |
| 87 | 28.7 | 27.8 | 27.0 | 26.1 | 25.3 | 24.4 | 23.6 | 22.8 | 21.9 | 21.1 |
| 88 | 28.7 | 27.8 | 27.0 | 26.1 | 25.2 | 24.4 | 23.5 | 22.7 | 21.9 | 21.1 |
| 89 | 28.7 | 27.8 | 26.9 | 26.1 | 25.2 | 24.4 | 23.5 | 22.7 | 21.9 | 21.1 |
| 90 | 28.7 | 27.8 | 26.9 | 26.1 | 25.2 | 24.3 | 23.5 | 22.7 | 21.8 | 21.0 |
| 91 | 28.7 | 27.8 | 26.9 | 26.0 | 25.2 | 24.3 | 23.5 | 22.6 | 21.8 | 21.0 |
| 92 | 28.6 | 27.8 | 26.9 | 26.0 | 25.2 | 24.3 | 23.5 | 22.6 | 21.8 | 21.0 |
| 93 | 28.6 | 27.8 | 26.9 | 26.0 | 25.1 | 24.3 | 23.4 | 22.6 | 21.8 | 20.9 |
| 94 | 28.6 | 27.7 | 26.9 | 26.0 | 25.1 | 24.3 | 23.4 | 22.6 | 21.7 | 20.9 |
| 95 | 28.6 | 27.7 | 26.9 | 26.0 | 25.1 | 24.3 | 23.4 | 22.6 | 21.7 | 20.9 |
| 96 | 28.6 | 27.7 | 26.9 | 26.0 | 25.1 | 24.2 | 23.4 | 22.6 | 21.7 | 20.9 |
| 97 | 28.6 | 27.7 | 26.8 | 26.0 | 25.1 | 24.2 | 23.4 | 22.5 | 21.7 | 20.9 |
| 98 | 28.6 | 27.7 | 26.8 | 26.0 | 25.1 | 24.2 | 23.4 | 22.5 | 21.7 | 20.9 |
| 99 | 28.6 | 27.7 | 26.8 | 26.0 | 25.1 | 24.2 | 23.4 | 22.5 | 21.7 | 20.9 |
| 100 | 28.6 | 27.7 | 26.8 | 26.0 | 25.1 | 24.2 | 23.4 | 22.5 | 21.7 | 20.8 |
| 101 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.4 | 22.5 | 21.7 | 20.8 |
| 102 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.3 | 22.5 | 21.7 | 20.8 |
| 103 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.3 | 22.5 | 21.7 | 20.8 |
| 104 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 105 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 106 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 107 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 108 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 109 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 110 | 28.6 | 27.7 | 26.8 | 25.9 | 25.1 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 111 | 28.6 | 27.7 | 26.8 | 25.9 | 25.0 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 112 | 28.6 | 27.7 | 26.8 | 25.9 | 25.0 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 113 | 28.6 | 27.7 | 26.8 | 25.9 | 25.0 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 114 | 28.6 | 27.7 | 26.8 | 25.9 | 25.0 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |
| 115 | 28.6 | 27.7 | 26.8 | 25.9 | 25.0 | 24.2 | 23.3 | 22.5 | 21.6 | 20.8 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 |
|---|---|---|---|---|---|---|---|---|---|---|
| 65 | 25.0 | 24.6 | 24.2 | 23.8 | 23.4 | 23.1 | 22.8 | 22.5 | 22.2 | 22.0 |
| 66 | 24.6 | 24.1 | 23.7 | 23.3 | 22.9 | 22.5 | 22.2 | 21.9 | 21.6 | 21.4 |
| 67 | 24.2 | 23.7 | 23.2 | 22.8 | 22.4 | 22.0 | 21.7 | 21.3 | 21.0 | 20.8 |
| 68 | 23.8 | 23.3 | 22.8 | 22.3 | 21.9 | 21.5 | 21.2 | 20.8 | 20.5 | 20.2 |
| 69 | 23.4 | 22.9 | 22.4 | 21.9 | 21.5 | 21.1 | 20.7 | 20.3 | 20.0 | 19.6 |
| 70 | 23.1 | 22.5 | 22.0 | 21.5 | 21.1 | 20.6 | 20.2 | 19.8 | 19.4 | 19.1 |
| 71 | 22.8 | 22.2 | 21.7 | 21.2 | 20.7 | 20.2 | 19.8 | 19.4 | 19.0 | 18.6 |
| 72 | 22.5 | 21.9 | 21.3 | 20.8 | 20.3 | 19.8 | 19.4 | 18.9 | 18.5 | 18.2 |
| 73 | 22.2 | 21.6 | 21.0 | 20.5 | 20.0 | 19.4 | 19.0 | 18.5 | 18.1 | 17.7 |
| 74 | 22.0 | 21.4 | 20.8 | 20.2 | 19.6 | 19.1 | 18.6 | 18.2 | 17.7 | 17.3 |
| 75 | 21.8 | 21.1 | 20.5 | 19.9 | 19.3 | 18.8 | 18.3 | 17.8 | 17.3 | 16.9 |
| 76 | 21.6 | 20.9 | 20.3 | 19.7 | 19.1 | 18.5 | 18.0 | 17.5 | 17.0 | 16.5 |
| 77 | 21.4 | 20.7 | 20.1 | 19.4 | 18.8 | 18.3 | 17.7 | 17.2 | 16.7 | 16.2 |
| 78 | 21.2 | 20.5 | 19.9 | 19.2 | 18.6 | 18.0 | 17.5 | 16.9 | 16.4 | 15.9 |
| 79 | 21.1 | 20.4 | 19.7 | 19.0 | 18.4 | 17.8 | 17.2 | 16.7 | 16.1 | 15.6 |
| 80 | 21.0 | 20.2 | 19.5 | 18.9 | 18.2 | 17.6 | 17.0 | 16.4 | 15.9 | 15.4 |
| 81 | 20.8 | 20.1 | 19.4 | 18.7 | 18.1 | 17.4 | 16.8 | 16.2 | 15.7 | 15.1 |
| 82 | 20.7 | 20.0 | 19.3 | 18.6 | 17.9 | 17.3 | 16.6 | 16.0 | 15.5 | 14.9 |
| 83 | 20.6 | 19.9 | 19.2 | 18.5 | 17.8 | 17.1 | 16.5 | 15.9 | 15.3 | 14.7 |
| 84 | 20.5 | 19.8 | 19.1 | 18.4 | 17.7 | 17.0 | 16.3 | 15.7 | 15.1 | 14.5 |
| 85 | 20.5 | 19.7 | 19.0 | 18.3 | 17.6 | 16.9 | 16.2 | 15.6 | 15.0 | 14.4 |
| 86 | 20.4 | 19.6 | 18.9 | 18.2 | 17.5 | 16.8 | 16.1 | 15.5 | 14.8 | 14.2 |
| 87 | 20.4 | 19.6 | 18.8 | 18.1 | 17.4 | 16.7 | 16.0 | 15.4 | 14.7 | 14.1 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 |
|---|---|---|---|---|---|---|---|---|---|---|
| 88 | 20.3 | 19.5 | 18.8 | 18.0 | 17.3 | 16.6 | 15.9 | 15.3 | 14.6 | 14.0 |
| 89 | 20.3 | 19.5 | 18.7 | 18.0 | 17.2 | 16.5 | 15.8 | 15.2 | 14.5 | 13.9 |
| 90 | 20.2 | 19.4 | 18.7 | 17.9 | 17.2 | 16.5 | 15.8 | 15.1 | 14.5 | 13.8 |
| 91 | 20.2 | 19.4 | 18.6 | 17.9 | 17.1 | 16.4 | 15.7 | 15.0 | 14.4 | 13.7 |
| 92 | 20.2 | 19.4 | 18.6 | 17.8 | 17.1 | 16.4 | 15.7 | 15.0 | 14.3 | 13.7 |
| 93 | 20.1 | 19.3 | 18.6 | 17.8 | 17.1 | 16.3 | 15.6 | 14.9 | 14.3 | 13.6 |
| 94 | 20.1 | 19.3 | 18.5 | 17.8 | 17.0 | 16.3 | 15.6 | 14.9 | 14.2 | 13.6 |
| 95 | 20.1 | 19.3 | 18.5 | 17.8 | 17.0 | 16.3 | 15.6 | 14.9 | 14.2 | 13.5 |
| 96 | 20.1 | 19.3 | 18.5 | 17.7 | 17.0 | 16.2 | 15.5 | 14.8 | 14.2 | 13.5 |
| 97 | 20.1 | 19.3 | 18.5 | 17.7 | 17.0 | 16.2 | 15.5 | 14.8 | 14.1 | 13.5 |
| 98 | 20.1 | 19.3 | 18.5 | 17.7 | 16.9 | 16.2 | 15.5 | 14.8 | 14.1 | 13.4 |
| 99 | 20.0 | 19.2 | 18.5 | 17.7 | 16.9 | 16.2 | 15.5 | 14.7 | 14.1 | 13.4 |
| 100 | 20.0 | 19.2 | 18.4 | 17.7 | 16.9 | 16.2 | 15.4 | 14.7 | 14.0 | 13.4 |
| 101 | 20.0 | 19.2 | 18.4 | 17.7 | 16.9 | 16.1 | 15.4 | 14.7 | 14.0 | 13.3 |
| 102 | 20.0 | 19.2 | 18.4 | 17.6 | 16.9 | 16.1 | 15.4 | 14.7 | 14.0 | 13.3 |
| 103 | 20.0 | 19.2 | 18.4 | 17.6 | 16.9 | 16.1 | 15.4 | 14.7 | 14.0 | 13.3 |
| 104 | 20.0 | 19.2 | 18.4 | 17.6 | 16.9 | 16.1 | 15.4 | 14.7 | 14.0 | 13.3 |
| 105 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.1 | 15.4 | 14.6 | 13.9 | 13.3 |
| 106 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.1 | 15.3 | 14.6 | 13.9 | 13.3 |
| 107 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.1 | 15.3 | 14.6 | 13.9 | 13.2 |
| 108 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.1 | 15.3 | 14.6 | 13.9 | 13.2 |
| 109 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.1 | 15.3 | 14.6 | 13.9 | 13.2 |
| 110 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.1 | 15.3 | 14.6 | 13.9 | 13.2 |
| 111 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.0 | 15.3 | 14.6 | 13.9 | 13.2 |
| 112 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.0 | 15.3 | 14.6 | 13.9 | 13.2 |
| 113 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.0 | 15.3 | 14.6 | 13.9 | 13.2 |
| 114 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.0 | 15.3 | 14.6 | 13.9 | 13.2 |
| 115 | 20.0 | 19.2 | 18.4 | 17.6 | 16.8 | 16.0 | 15.3 | 14.6 | 13.9 | 13.2 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 |
|---|---|---|---|---|---|---|---|---|---|---|
| 75 | 16.5 | 16.1 | 15.8 | 15.4 | 15.1 | 14.9 | 14.6 | 14.4 | 14.2 | 14.0 |
| 76 | 16.1 | 15.7 | 15.4 | 15.0 | 14.7 | 14.4 | 14.1 | 13.9 | 13.7 | 13.5 |
| 77 | 15.8 | 15.4 | 15.0 | 14.6 | 14.3 | 14.0 | 13.7 | 13.4 | 13.2 | 13.0 |
| 78 | 15.4 | 15.0 | 14.6 | 14.2 | 13.9 | 13.5 | 13.2 | 13.0 | 12.7 | 12.5 |
| 79 | 15.1 | 14.7 | 14.3 | 13.9 | 13.5 | 13.2 | 12.8 | 12.5 | 12.3 | 12.0 |
| 80 | 14.9 | 14.4 | 14.0 | 13.5 | 13.2 | 12.8 | 12.5 | 12.2 | 11.9 | 11.6 |
| 81 | 14.6 | 14.1 | 13.7 | 13.2 | 12.8 | 12.5 | 12.1 | 11.8 | 11.5 | 11.2 |
| 82 | 14.4 | 13.9 | 13.4 | 13.0 | 12.5 | 12.2 | 11.8 | 11.5 | 11.1 | 10.9 |
| 83 | 14.2 | 13.7 | 13.2 | 12.7 | 12.3 | 11.9 | 11.5 | 11.1 | 10.8 | 10.5 |
| 84 | 14.0 | 13.5 | 13.0 | 12.5 | 12.0 | 11.6 | 11.2 | 10.9 | 10.5 | 10.2 |
| 85 | 13.8 | 13.3 | 12.8 | 12.3 | 11.8 | 11.4 | 11.0 | 10.6 | 10.2 | 9.9 |
| 86 | 13.7 | 13.1 | 12.6 | 12.1 | 11.6 | 11.2 | 10.8 | 10.4 | 10.0 | 9.7 |
| 87 | 13.5 | 13.0 | 12.4 | 11.9 | 11.4 | 11.0 | 10.6 | 10.1 | 9.8 | 9.4 |
| 88 | 13.4 | 12.8 | 12.3 | 11.8 | 11.3 | 10.8 | 10.4 | 10.0 | 9.6 | 9.2 |
| 89 | 13.3 | 12.7 | 12.2 | 11.6 | 11.1 | 10.7 | 10.2 | 9.8 | 9.4 | 9.0 |
| 90 | 13.2 | 12.6 | 12.1 | 11.5 | 11.0 | 10.5 | 10.1 | 9.6 | 9.2 | 8.8 |
| 91 | 13.1 | 12.5 | 12.0 | 11.4 | 10.9 | 10.4 | 9.9 | 9.5 | 9.1 | 8.7 |
| 92 | 13.1 | 12.5 | 11.9 | 11.3 | 10.8 | 10.3 | 9.8 | 9.4 | 8.9 | 8.5 |
| 93 | 13.0 | 12.4 | 11.8 | 11.3 | 10.7 | 10.2 | 9.7 | 9.3 | 8.8 | 8.4 |
| 94 | 12.9 | 12.3 | 11.7 | 11.2 | 10.6 | 10.1 | 9.6 | 9.2 | 8.7 | 8.3 |
| 95 | 12.9 | 12.3 | 11.7 | 11.1 | 10.6 | 10.1 | 9.6 | 9.1 | 8.6 | 8.2 |
| 96 | 12.9 | 12.2 | 11.6 | 11.1 | 10.5 | 10.0 | 9.5 | 9.0 | 8.5 | 8.1 |
| 97 | 12.8 | 12.2 | 11.6 | 11.0 | 10.5 | 9.9 | 9.4 | 8.9 | 8.5 | 8.0 |
| 98 | 12.8 | 12.2 | 11.5 | 11.0 | 10.4 | 9.9 | 9.4 | 8.9 | 8.4 | 8.0 |
| 99 | 12.7 | 12.1 | 11.5 | 10.9 | 10.4 | 9.8 | 9.3 | 8.8 | 8.3 | 7.9 |
| 100 | 12.7 | 12.1 | 11.5 | 10.9 | 10.3 | 9.8 | 9.2 | 8.7 | 8.3 | 7.8 |
| 101 | 12.7 | 12.1 | 11.4 | 10.8 | 10.3 | 9.7 | 9.2 | 8.7 | 8.2 | 7.8 |
| 102 | 12.7 | 12.0 | 11.4 | 10.8 | 10.2 | 9.7 | 9.2 | 8.7 | 8.2 | 7.7 |
| 103 | 12.6 | 12.0 | 11.4 | 10.8 | 10.2 | 9.7 | 9.1 | 8.6 | 8.1 | 7.7 |
| 104 | 12.6 | 12.0 | 11.4 | 10.8 | 10.2 | 9.6 | 9.1 | 8.6 | 8.1 | 7.6 |
| 105 | 12.6 | 12.0 | 11.3 | 10.7 | 10.2 | 9.6 | 9.1 | 8.5 | 8.0 | 7.6 |
| 106 | 12.6 | 11.9 | 11.3 | 10.7 | 10.1 | 9.6 | 9.0 | 8.5 | 8.0 | 7.5 |
| 107 | 12.6 | 11.9 | 11.3 | 10.7 | 10.1 | 9.6 | 9.0 | 8.5 | 8.0 | 7.5 |
| 108 | 12.6 | 11.9 | 11.3 | 10.7 | 10.1 | 9.5 | 9.0 | 8.5 | 8.0 | 7.5 |
| 109 | 12.6 | 11.9 | 11.3 | 10.7 | 10.1 | 9.5 | 9.0 | 8.4 | 7.9 | 7.5 |
| 110 | 12.6 | 11.9 | 11.3 | 10.7 | 10.1 | 9.5 | 9.0 | 8.4 | 7.9 | 7.4 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 |
|---|---|---|---|---|---|---|---|---|---|---|
| 111 | 12.5 | 11.9 | 11.3 | 10.7 | 10.1 | 9.5 | 8.9 | 8.4 | 7.9 | 7.4 |
| 112 | 12.5 | 11.9 | 11.3 | 10.6 | 10.1 | 9.5 | 8.9 | 8.4 | 7.9 | 7.4 |
| 113 | 12.5 | 11.9 | 11.2 | 10.6 | 10.0 | 9.5 | 8.9 | 8.4 | 7.9 | 7.4 |
| 114 | 12.5 | 11.9 | 11.2 | 10.6 | 10.0 | 9.5 | 8.9 | 8.4 | 7.9 | 7.4 |
| 115 | 12.5 | 11.9 | 11.2 | 10.6 | 10.0 | 9.5 | 8.9 | 8.4 | 7.9 | 7.4 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 |
|---|---|---|---|---|---|---|---|---|---|---|
| 85 | 9.6 | 9.3 | 9.1 | 8.9 | 8.7 | 8.5 | 8.3 | 8.2 | 8.0 | 7.9 |
| 86 | 9.3 | 9.1 | 8.8 | 8.6 | 8.3 | 8.2 | 8.0 | 7.8 | 7.7 | 7.6 |
| 87 | 9.1 | 8.8 | 8.5 | 8.3 | 8.1 | 7.9 | 7.7 | 7.5 | 7.4 | 7.2 |
| 88 | 8.9 | 8.6 | 8.3 | 8.0 | 7.8 | 7.6 | 7.4 | 7.2 | 7.1 | 6.9 |
| 89 | 8.7 | 8.3 | 8.1 | 7.8 | 7.5 | 7.3 | 7.1 | 6.9 | 6.8 | 6.6 |
| 90 | 8.5 | 8.2 | 7.9 | 7.6 | 7.3 | 7.1 | 6.9 | 6.7 | 6.5 | 6.4 |
| 91 | 8.3 | 8.0 | 7.7 | 7.4 | 7.1 | 6.9 | 6.7 | 6.5 | 6.3 | 6.2 |
| 92 | 8.2 | 7.8 | 7.5 | 7.2 | 6.9 | 6.7 | 6.5 | 6.3 | 6.1 | 5.9 |
| 93 | 8.0 | 7.7 | 7.4 | 7.1 | 6.8 | 6.5 | 6.3 | 6.1 | 5.9 | 5.8 |
| 94 | 7.9 | 7.6 | 7.2 | 6.9 | 6.6 | 6.4 | 6.2 | 5.9 | 5.8 | 5.6 |
| 95 | 7.8 | 7.5 | 7.1 | 6.8 | 6.5 | 6.3 | 6.0 | 5.8 | 5.6 | 5.4 |
| 96 | 7.7 | 7.3 | 7.0 | 6.7 | 6.4 | 6.1 | 5.9 | 5.7 | 5.5 | 5.3 |
| 97 | 7.6 | 7.3 | 6.9 | 6.6 | 6.3 | 6.0 | 5.8 | 5.5 | 5.3 | 5.1 |
| 98 | 7.6 | 7.2 | 6.8 | 6.5 | 6.2 | 5.9 | 5.6 | 5.4 | 5.2 | 5.0 |
| 99 | 7.5 | 7.1 | 6.7 | 6.4 | 6.1 | 5.8 | 5.5 | 5.3 | 5.1 | 4.9 |
| 100 | 7.4 | 7.0 | 6.6 | 6.3 | 6.0 | 5.7 | 5.4 | 5.2 | 5.0 | 4.8 |
| 101 | 7.3 | 6.9 | 6.6 | 6.2 | 5.9 | 5.6 | 5.3 | 5.1 | 4.9 | 4.7 |
| 102 | 7.3 | 6.9 | 6.5 | 6.2 | 5.8 | 5.5 | 5.3 | 5.0 | 4.8 | 4.6 |
| 103 | 7.2 | 6.8 | 6.4 | 6.1 | 5.8 | 5.5 | 5.2 | 4.9 | 4.7 | 4.5 |
| 104 | 7.2 | 6.8 | 6.4 | 6.0 | 5.7 | 5.4 | 5.1 | 4.8 | 4.6 | 4.4 |
| 105 | 7.1 | 6.7 | 6.3 | 6.0 | 5.6 | 5.3 | 5.0 | 4.8 | 4.5 | 4.3 |
| 106 | 7.1 | 6.7 | 6.3 | 5.9 | 5.6 | 5.3 | 5.0 | 4.7 | 4.5 | 4.2 |
| 107 | 7.1 | 6.6 | 6.2 | 5.9 | 5.5 | 5.2 | 4.9 | 4.6 | 4.4 | 4.2 |
| 108 | 7.0 | 6.6 | 6.2 | 5.8 | 5.5 | 5.2 | 4.9 | 4.6 | 4.3 | 4.1 |
| 109 | 7.0 | 6.6 | 6.2 | 5.8 | 5.5 | 5.1 | 4.8 | 4.5 | 4.3 | 4.1 |
| 110 | 7.0 | 6.6 | 6.2 | 5.8 | 5.4 | 5.1 | 4.8 | 4.5 | 4.3 | 4.0 |
| 111 | 7.0 | 6.5 | 6.1 | 5.7 | 5.4 | 5.1 | 4.8 | 4.5 | 4.2 | 4.0 |
| 112 | 7.0 | 6.5 | 6.1 | 5.7 | 5.4 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 |
| 113 | 6.9 | 6.5 | 6.1 | 5.7 | 5.4 | 5.0 | 4.7 | 4.4 | 4.2 | 3.9 |
| 114 | 6.9 | 6.5 | 6.1 | 5.7 | 5.3 | 5.0 | 4.7 | 4.4 | 4.1 | 3.9 |
| 115 | 6.9 | 6.5 | 6.1 | 5.7 | 5.3 | 5.0 | 4.7 | 4.4 | 4.1 | 3.9 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 |
|---|---|---|---|---|---|---|---|---|---|---|
| 95 | 5.3 | 5.1 | 5.0 | 4.8 | 4.7 | 4.6 | 4.5 | 4.4 | 4.3 | 4.2 |
| 96 | 5.1 | 5.0 | 4.8 | 4.7 | 4.5 | 4.4 | 4.3 | 4.2 | 4.1 | 4.0 |
| 97 | 5.0 | 4.8 | 4.7 | 4.5 | 4.4 | 4.3 | 4.1 | 4.0 | 3.9 | 3.8 |
| 98 | 4.8 | 4.7 | 4.5 | 4.4 | 4.2 | 4.1 | 4.0 | 3.9 | 3.8 | 3.7 |
| 99 | 4.7 | 4.5 | 4.4 | 4.2 | 4.1 | 4.0 | 3.8 | 3.7 | 3.6 | 3.5 |
| 100 | 4.6 | 4.4 | 4.3 | 4.1 | 4.0 | 3.8 | 3.7 | 3.6 | 3.5 | 3.3 |
| 101 | 4.5 | 4.3 | 4.1 | 4.0 | 3.8 | 3.7 | 3.6 | 3.4 | 3.3 | 3.2 |
| 102 | 4.4 | 4.2 | 4.0 | 3.9 | 3.7 | 3.6 | 3.4 | 3.3 | 3.2 | 3.1 |
| 103 | 4.3 | 4.1 | 3.9 | 3.8 | 3.6 | 3.5 | 3.3 | 3.2 | 3.0 | 2.9 |
| 104 | 4.2 | 4.0 | 3.8 | 3.7 | 3.5 | 3.3 | 3.2 | 3.1 | 2.9 | 2.8 |
| 105 | 4.1 | 3.9 | 3.7 | 3.6 | 3.4 | 3.2 | 3.1 | 2.9 | 2.8 | 2.7 |
| 106 | 4.0 | 3.8 | 3.6 | 3.5 | 3.3 | 3.1 | 3.0 | 2.8 | 2.7 | 2.5 |
| 107 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.1 | 2.9 | 2.7 | 2.6 | 2.4 |
| 108 | 3.9 | 3.7 | 3.5 | 3.3 | 3.1 | 3.0 | 2.8 | 2.7 | 2.5 | 2.3 |
| 109 | 3.8 | 3.6 | 3.4 | 3.3 | 3.1 | 2.9 | 2.7 | 2.6 | 2.4 | 2.3 |
| 110 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.7 | 2.5 | 2.3 | 2.2 |
| 111 | 3.8 | 3.5 | 3.3 | 3.2 | 3.0 | 2.8 | 2.6 | 2.4 | 2.3 | 2.1 |
| 112 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.8 | 2.6 | 2.4 | 2.2 | 2.1 |
| 113 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.4 | 2.2 | 2.0 |
| 114 | 3.7 | 3.5 | 3.3 | 3.1 | 2.9 | 2.7 | 2.5 | 2.3 | 2.1 | 2.0 |
| 115 | 3.7 | 3.4 | 3.2 | 3.0 | 2.8 | 2.7 | 2.5 | 2.3 | 2.1 | 1.9 |

TABLE VI—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 | 114 | 115 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 105 | 2.5 | 2.4 | 2.3 | 2.2 | 2.1 | 2.0 | 2.0 | 1.9 | 1.8 | 1.8 | 1.8 |
| 106 | 2.4 | 2.3 | 2.2 | 2.1 | 2.0 | 1.9 | 1.8 | 1.7 | 1.7 | 1.6 | 1.6 |
| 107 | 2.3 | 2.2 | 2.1 | 1.9 | 1.8 | 1.7 | 1.7 | 1.6 | 1.5 | 1.5 | 1.4 |
| 108 | 2.2 | 2.1 | 1.9 | 1.8 | 1.7 | 1.6 | 1.5 | 1.5 | 1.4 | 1.3 | 1.3 |
| 109 | 2.1 | 2.0 | 1.8 | 1.7 | 1.6 | 1.5 | 1.4 | 1.3 | 1.3 | 1.2 | 1.1 |
| 110 | 2.0 | 1.9 | 1.7 | 1.6 | 1.5 | 1.4 | 1.3 | 1.2 | 1.1 | 1.1 | 1.0 |
| 111 | 2.0 | 1.8 | 1.7 | 1.5 | 1.4 | 1.3 | 1.2 | 1.1 | 1.0 | .9 | .9 |
| 112 | 1.9 | 1.7 | 1.6 | 1.5 | 1.3 | 1.2 | 1.1 | 1.0 | .9 | .8 | .8 |
| 113 | 1.8 | 1.7 | 1.5 | 1.4 | 1.3 | 1.1 | 1.0 | .9 | .8 | .7 | .7 |
| 114 | 1.8 | 1.6 | 1.5 | 1.3 | 1.2 | 1.1 | .9 | .8 | .7 | .6 | .6 |
| 115 | 1.8 | 1.6 | 1.4 | 1.3 | 1.1 | 1.0 | .9 | .8 | .7 | .6 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
|---|---|---|---|---|---|---|---|---|---|---|
| 5 | 69.5 | 69.0 | 68.4 | 67.9 | 67.3 | 66.7 | 66.1 | 65.5 | 64.8 | 64.1 |
| 6 | 69.0 | 68.5 | 68.0 | 67.5 | 66.9 | 66.4 | 65.8 | 65.1 | 64.5 | 63.8 |
| 7 | 68.4 | 68.0 | 67.5 | 67.0 | 66.5 | 66.0 | 65.4 | 64.8 | 64.2 | 63.5 |
| 8 | 67.9 | 67.5 | 67.0 | 66.6 | 66.1 | 65.5 | 65.0 | 64.4 | 63.8 | 63.2 |
| 9 | 67.3 | 66.9 | 66.5 | 66.1 | 65.6 | 65.1 | 64.6 | 64.0 | 63.4 | 62.8 |
| 10 | 66.7 | 66.4 | 66.0 | 65.5 | 65.1 | 64.6 | 64.1 | 63.6 | 63.0 | 62.5 |
| 11 | 66.1 | 65.8 | 65.4 | 65.0 | 64.6 | 64.1 | 63.6 | 63.1 | 62.6 | 62.1 |
| 12 | 65.5 | 65.1 | 64.8 | 64.4 | 64.0 | 63.6 | 63.1 | 62.7 | 62.2 | 61.7 |
| 13 | 64.8 | 64.5 | 64.2 | 63.8 | 63.4 | 63.0 | 62.6 | 62.2 | 61.7 | 61.2 |
| 14 | 64.1 | 63.8 | 63.5 | 63.2 | 62.8 | 62.5 | 62.1 | 61.7 | 61.2 | 60.7 |
| 15 | 63.4 | 63.1 | 62.9 | 62.6 | 62.2 | 61.9 | 61.5 | 61.1 | 60.7 | 60.2 |
| 16 | 62.7 | 62.4 | 62.2 | 61.9 | 61.6 | 61.3 | 60.9 | 60.5 | 60.1 | 59.7 |
| 17 | 61.9 | 61.7 | 61.5 | 61.2 | 60.9 | 60.6 | 60.3 | 59.9 | 59.6 | 59.2 |
| 18 | 61.2 | 61.0 | 60.7 | 60.5 | 60.2 | 60.0 | 59.7 | 59.3 | 59.0 | 58.6 |
| 19 | 60.4 | 60.2 | 60.0 | 59.8 | 59.5 | 59.3 | 59.0 | 58.7 | 58.4 | 58.0 |
| 20 | 59.6 | 59.4 | 59.2 | 59.0 | 58.8 | 58.6 | 58.3 | 58.0 | 57.7 | 57.4 |
| 21 | 58.8 | 58.7 | 58.5 | 58.3 | 58.1 | 57.8 | 57.6 | 57.3 | 57.1 | 56.8 |
| 22 | 58.0 | 57.8 | 57.7 | 57.5 | 57.3 | 57.1 | 56.9 | 56.6 | 56.4 | 56.1 |
| 23 | 57.2 | 57.0 | 56.9 | 56.7 | 56.5 | 56.4 | 56.1 | 55.9 | 55.7 | 55.4 |
| 24 | 56.3 | 56.2 | 56.1 | 55.9 | 55.8 | 55.6 | 55.4 | 55.2 | 55.0 | 54.7 |
| 25 | 55.5 | 55.4 | 55.2 | 55.1 | 55.0 | 54.8 | 54.6 | 54.4 | 54.2 | 54.0 |
| 26 | 54.6 | 54.5 | 54.4 | 54.3 | 54.1 | 54.0 | 53.8 | 53.7 | 53.5 | 53.3 |
| 27 | 53.8 | 53.7 | 53.6 | 53.4 | 53.3 | 53.2 | 53.0 | 52.9 | 52.7 | 52.5 |
| 28 | 52.9 | 52.8 | 52.7 | 52.6 | 52.5 | 52.4 | 52.2 | 52.1 | 51.9 | 51.7 |
| 29 | 52.0 | 51.9 | 51.8 | 51.7 | 51.6 | 51.5 | 51.4 | 51.3 | 51.1 | 51.0 |
| 30 | 51.1 | 51.0 | 51.0 | 50.9 | 50.8 | 50.7 | 50.6 | 50.4 | 50.3 | 50.2 |
| 31 | 50.2 | 50.2 | 50.1 | 50.0 | 49.9 | 49.8 | 49.7 | 49.6 | 49.5 | 49.3 |
| 32 | 49.3 | 49.3 | 49.2 | 49.1 | 49.0 | 49.0 | 48.9 | 48.8 | 48.6 | 48.5 |
| 33 | 48.4 | 48.4 | 48.3 | 48.2 | 48.2 | 48.1 | 48.0 | 47.9 | 47.8 | 47.7 |
| 34 | 47.5 | 47.5 | 47.4 | 47.4 | 47.3 | 47.2 | 47.1 | 47.0 | 47.0 | 46.8 |
| 35 | 46.6 | 46.6 | 46.5 | 46.5 | 46.4 | 46.3 | 46.3 | 46.2 | 46.1 | 46.0 |
| 36 | 45.7 | 45.7 | 45.6 | 45.6 | 45.5 | 45.4 | 45.4 | 45.3 | 45.2 | 45.1 |
| 37 | 44.8 | 44.7 | 44.7 | 44.6 | 44.6 | 44.5 | 44.5 | 44.4 | 44.3 | 44.3 |
| 38 | 43.9 | 43.8 | 43.8 | 43.7 | 43.7 | 43.6 | 43.6 | 43.5 | 43.5 | 43.4 |
| 39 | 42.9 | 42.9 | 42.9 | 42.8 | 42.8 | 42.7 | 42.7 | 42.6 | 42.6 | 42.5 |
| 40 | 42.0 | 42.0 | 42.0 | 41.9 | 41.9 | 41.8 | 41.8 | 41.7 | 41.7 | 41.6 |
| 41 | 41.1 | 41.1 | 41.0 | 41.0 | 41.0 | 40.9 | 40.9 | 40.8 | 40.8 | 40.7 |
| 42 | 40.2 | 40.1 | 40.1 | 40.1 | 40.1 | 40.0 | 40.0 | 39.9 | 39.9 | 39.8 |
| 43 | 39.2 | 39.2 | 39.2 | 39.2 | 39.1 | 39.1 | 39.1 | 39.0 | 39.0 | 39.0 |
| 44 | 38.3 | 38.3 | 38.3 | 38.3 | 38.2 | 38.2 | 38.2 | 38.1 | 38.1 | 38.1 |
| 45 | 37.4 | 37.4 | 37.4 | 37.3 | 37.3 | 37.3 | 37.3 | 37.2 | 37.2 | 37.2 |
| 46 | 36.5 | 36.5 | 36.5 | 36.4 | 36.4 | 36.4 | 36.4 | 36.3 | 36.3 | 36.3 |
| 47 | 35.6 | 35.6 | 35.5 | 35.5 | 35.5 | 35.5 | 35.5 | 35.4 | 35.4 | 35.4 |
| 48 | 34.7 | 34.7 | 34.6 | 34.6 | 34.6 | 34.6 | 34.6 | 34.5 | 34.5 | 34.5 |
| 49 | 33.8 | 33.8 | 33.7 | 33.7 | 33.7 | 33.7 | 33.7 | 33.7 | 33.6 | 33.6 |
| 50 | 32.9 | 32.9 | 32.8 | 32.8 | 32.8 | 32.8 | 32.8 | 32.8 | 32.7 | 32.7 |
| 51 | 32.0 | 32.0 | 31.9 | 31.9 | 31.9 | 31.9 | 31.9 | 31.9 | 31.9 | 31.8 |
| 52 | 31.1 | 31.1 | 31.1 | 31.0 | 31.0 | 31.0 | 31.0 | 31.0 | 31.0 | 30.9 |
| 53 | 30.2 | 30.2 | 30.2 | 30.2 | 30.1 | 30.1 | 30.1 | 30.1 | 30.1 | 30.1 |
| 54 | 29.3 | 29.3 | 29.3 | 29.3 | 29.3 | 29.2 | 29.2 | 29.2 | 29.2 | 29.2 |
| 55 | 28.4 | 28.4 | 28.4 | 28.4 | 28.4 | 28.4 | 28.4 | 28.3 | 28.3 | 28.3 |
| 56 | 27.5 | 27.5 | 27.5 | 27.5 | 27.5 | 27.5 | 27.5 | 27.5 | 27.5 | 27.5 |
| 57 | 26.7 | 26.7 | 26.7 | 26.6 | 26.6 | 26.6 | 26.6 | 26.6 | 26.6 | 26.6 |
| 58 | 25.8 | 25.8 | 25.8 | 25.8 | 25.8 | 25.8 | 25.8 | 25.7 | 25.7 | 25.7 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
|---|---|---|---|---|---|---|---|---|---|---|
| 59 | 24.9 | 24.9 | 24.9 | 24.9 | 24.9 | 24.9 | 24.9 | 24.9 | 24.9 | 24.9 |
| 60 | 24.1 | 24.1 | 24.1 | 24.1 | 24.1 | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 |
| 61 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 | 23.2 |
| 62 | 22.4 | 22.4 | 22.4 | 22.4 | 22.4 | 22.4 | 22.3 | 22.3 | 22.3 | 22.3 |
| 63 | 21.5 | 21.5 | 21.5 | 21.5 | 21.5 | 21.5 | 21.5 | 21.5 | 21.5 | 21.5 |
| 64 | 20.7 | 20.7 | 20.7 | 20.7 | 20.7 | 20.7 | 20.7 | 20.7 | 20.7 | 20.7 |
| 65 | 19.9 | 19.9 | 19.9 | 19.9 | 19.9 | 19.9 | 19.9 | 19.9 | 19.9 | 19.9 |
| 66 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 |
| 67 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 |
| 68 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 |
| 69 | 16.8 | 16.8 | 16.8 | 16.7 | 16.7 | 16.7 | 16.7 | 16.7 | 16.7 | 16.7 |
| 70 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 |
| 71 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.2 |
| 72 | 14.6 | 14.6 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 |
| 73 | 13.9 | 13.9 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 |
| 74 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 |
| 75 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 |
| 76 | 11.9 | 11.9 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 |
| 77 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 |
| 78 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 |
| 79 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| 80 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.4 | 9.4 |
| 81 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 |
| 82 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 |
| 83 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 |
| 84 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 |
| 85 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 |
| 86 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 |
| 87 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 |
| 88 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 |
| 89 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 |
| 90 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| 91 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 |
| 92 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 |
| 93 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 |
| 94 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 |
| 95 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.6 | 3.6 | 3.6 | 3.6 |
| 96 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 |
| 97 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 |
| 98 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 99 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| 100 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 |
| 101 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 102 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 |
| 106 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|
| 15 | 59.8 | 59.3 | 58.8 | 58.2 | 57.6 | 57.0 | 56.4 | 55.8 | 55.1 | 54.5 |
| 16 | 59.3 | 58.8 | 58.3 | 57.8 | 57.2 | 56.7 | 56.1 | 55.5 | 54.8 | 54.2 |
| 17 | 58.8 | 58.3 | 57.8 | 57.3 | 56.8 | 56.3 | 55.7 | 55.1 | 54.5 | 53.9 |
| 18 | 58.2 | 57.8 | 57.3 | 56.9 | 56.4 | 55.9 | 55.3 | 54.7 | 54.2 | 53.5 |
| 19 | 57.6 | 57.2 | 56.8 | 56.4 | 55.9 | 55.4 | 54.9 | 54.4 | 53.8 | 53.2 |
| 20 | 57.0 | 56.7 | 56.3 | 55.9 | 55.4 | 54.9 | 54.5 | 53.9 | 53.4 | 52.8 |
| 21 | 56.4 | 56.1 | 55.7 | 55.3 | 54.9 | 54.5 | 54.0 | 53.5 | 53.0 | 52.4 |
| 22 | 55.8 | 55.5 | 55.1 | 54.7 | 54.4 | 53.9 | 53.5 | 53.0 | 52.5 | 52.0 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|
| 23 | 55.1 | 54.8 | 54.5 | 54.2 | 53.8 | 53.4 | 53.0 | 52.5 | 52.1 | 51.6 |
| 24 | 54.5 | 54.2 | 53.9 | 53.5 | 53.2 | 52.8 | 52.4 | 52.0 | 51.6 | 51.1 |
| 25 | 53.8 | 53.5 | 53.2 | 52.9 | 52.6 | 52.2 | 51.9 | 51.5 | 51.1 | 50.6 |
| 26 | 53.0 | 52.8 | 52.5 | 52.3 | 52.0 | 51.6 | 51.3 | 50.9 | 50.5 | 50.1 |
| 27 | 52.3 | 52.1 | 51.8 | 51.6 | 51.3 | 51.0 | 50.7 | 50.3 | 50.0 | 49.6 |
| 28 | 51.5 | 51.3 | 51.1 | 50.9 | 50.6 | 50.3 | 50.0 | 49.7 | 49.4 | 49.0 |
| 29 | 50.8 | 50.6 | 50.4 | 50.2 | 49.9 | 49.7 | 49.4 | 49.1 | 48.8 | 48.4 |
| 30 | 50.0 | 49.8 | 49.6 | 49.4 | 49.2 | 49.0 | 48.7 | 48.4 | 48.1 | 47.8 |
| 31 | 49.2 | 49.0 | 48.9 | 48.7 | 48.5 | 48.3 | 48.0 | 47.8 | 47.5 | 47.2 |
| 32 | 48.4 | 48.2 | 48.1 | 47.9 | 47.7 | 47.5 | 47.3 | 47.1 | 46.8 | 46.5 |
| 33 | 47.6 | 47.4 | 47.3 | 47.1 | 47.0 | 46.8 | 46.6 | 46.3 | 46.1 | 45.9 |
| 34 | 46.7 | 46.6 | 46.5 | 46.3 | 46.2 | 46.0 | 45.8 | 45.6 | 45.4 | 45.2 |
| 35 | 45.9 | 45.8 | 45.7 | 45.5 | 45.4 | 45.2 | 45.1 | 44.9 | 44.7 | 44.4 |
| 36 | 45.0 | 44.9 | 44.8 | 44.7 | 44.6 | 44.4 | 44.3 | 44.1 | 43.9 | 43.7 |
| 37 | 44.2 | 44.1 | 44.0 | 43.9 | 43.8 | 43.6 | 43.5 | 43.3 | 43.2 | 43.0 |
| 38 | 43.3 | 43.2 | 43.1 | 43.0 | 42.9 | 42.8 | 42.7 | 42.5 | 42.4 | 42.2 |
| 39 | 42.4 | 42.4 | 42.3 | 42.2 | 42.1 | 42.0 | 41.9 | 41.7 | 41.6 | 41.4 |
| 40 | 41.6 | 41.5 | 41.4 | 41.3 | 41.2 | 41.1 | 41.0 | 40.9 | 40.8 | 40.6 |
| 41 | 40.7 | 40.6 | 40.5 | 40.5 | 40.4 | 40.3 | 40.2 | 40.1 | 40.0 | 39.8 |
| 42 | 39.8 | 39.7 | 39.7 | 39.6 | 39.5 | 39.4 | 39.4 | 39.3 | 39.1 | 39.0 |
| 43 | 38.9 | 38.9 | 38.8 | 38.7 | 38.7 | 38.6 | 38.5 | 38.4 | 38.3 | 38.2 |
| 44 | 38.0 | 38.0 | 37.9 | 37.9 | 37.8 | 37.7 | 37.7 | 37.6 | 37.5 | 37.4 |
| 45 | 37.1 | 37.1 | 37.0 | 37.0 | 36.9 | 36.9 | 36.8 | 36.7 | 36.6 | 36.5 |
| 46 | 36.2 | 36.2 | 36.2 | 36.1 | 36.1 | 36.0 | 35.9 | 35.9 | 35.8 | 35.7 |
| 47 | 35.3 | 35.3 | 35.3 | 35.2 | 35.2 | 35.1 | 35.1 | 35.0 | 34.9 | 34.9 |
| 48 | 34.5 | 34.4 | 34.4 | 34.4 | 34.3 | 34.3 | 34.2 | 34.2 | 34.1 | 34.0 |
| 49 | 33.6 | 33.5 | 33.5 | 33.5 | 33.4 | 33.4 | 33.4 | 33.3 | 33.2 | 33.2 |
| 50 | 32.7 | 32.7 | 32.6 | 32.6 | 32.6 | 32.5 | 32.5 | 32.4 | 32.4 | 32.3 |
| 51 | 31.8 | 31.8 | 31.8 | 31.7 | 31.7 | 31.7 | 31.6 | 31.6 | 31.5 | 31.5 |
| 52 | 30.9 | 30.9 | 30.9 | 30.9 | 30.8 | 30.8 | 30.8 | 30.7 | 30.7 | 30.6 |
| 53 | 30.0 | 30.0 | 30.0 | 30.0 | 30.0 | 29.9 | 29.9 | 29.9 | 29.8 | 29.8 |
| 54 | 29.2 | 29.2 | 29.1 | 29.1 | 29.1 | 29.1 | 29.0 | 29.0 | 29.0 | 28.9 |
| 55 | 28.3 | 28.3 | 28.3 | 28.3 | 28.2 | 28.2 | 28.2 | 28.2 | 28.1 | 28.1 |
| 56 | 27.4 | 27.4 | 27.4 | 27.4 | 27.4 | 27.3 | 27.3 | 27.3 | 27.3 | 27.2 |
| 57 | 26.6 | 26.6 | 26.5 | 26.5 | 26.5 | 26.5 | 26.5 | 26.5 | 26.4 | 26.4 |
| 58 | 25.7 | 25.7 | 25.7 | 25.7 | 25.7 | 25.6 | 25.6 | 25.6 | 25.6 | 25.6 |
| 59 | 24.9 | 24.8 | 24.8 | 24.8 | 24.8 | 24.8 | 24.8 | 24.8 | 24.7 | 24.7 |
| 60 | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 | 23.9 | 23.9 | 23.9 | 23.9 | 23.9 |
| 61 | 23.2 | 23.2 | 23.1 | 23.1 | 23.1 | 23.1 | 23.1 | 23.1 | 23.1 | 23.0 |
| 62 | 22.3 | 22.3 | 22.3 | 22.3 | 22.3 | 22.3 | 22.3 | 22.2 | 22.2 | 22.2 |
| 63 | 21.5 | 21.5 | 21.5 | 21.5 | 21.5 | 21.4 | 21.4 | 21.4 | 21.4 | 21.4 |
| 64 | 20.7 | 20.7 | 20.7 | 20.6 | 20.6 | 20.6 | 20.6 | 20.6 | 20.6 | 20.6 |
| 65 | 19.9 | 19.8 | 19.8 | 19.8 | 19.8 | 19.8 | 19.8 | 19.8 | 19.8 | 19.8 |
| 66 | 19.1 | 19.0 | 19.0 | 19.0 | 19.0 | 19.0 | 19.0 | 19.0 | 19.0 | 19.0 |
| 67 | 18.3 | 18.3 | 18.3 | 18.3 | 18.2 | 18.2 | 18.2 | 18.2 | 18.2 | 18.2 |
| 68 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 | 17.5 | 17.4 | 17.4 |
| 69 | 16.7 | 16.7 | 16.7 | 16.7 | 16.7 | 16.7 | 16.7 | 16.7 | 16.7 | 16.7 |
| 70 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 15.9 | 15.9 | 15.9 | 15.9 |
| 71 | 15.2 | 15.2 | 15.2 | 15.2 | 15.2 | 15.2 | 15.2 | 15.2 | 15.2 | 15.2 |
| 72 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 |
| 73 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 |
| 74 | 13.2 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 |
| 75 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 |
| 76 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 |
| 77 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 |
| 78 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 |
| 79 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| 80 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 |
| 81 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 |
| 82 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 |
| 83 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.8 | 7.8 |
| 84 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 |
| 85 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 |
| 86 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 |
| 87 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 |
| 88 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 |
| 89 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 |
| 90 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| 91 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 |
| 92 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 |
| 93 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|
| 94 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 |
| 95 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 |
| 96 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 |
| 97 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 |
| 98 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 99 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| 100 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 |
| 101 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 102 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 |
| 106 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 |
|---|---|---|---|---|---|---|---|---|---|---|
| 25 | 50.2 | 49.7 | 49.2 | 48.6 | 48.1 | 47.5 | 46.9 | 46.2 | 45.6 | 44.9 |
| 26 | 49.7 | 49.2 | 48.7 | 48.2 | 47.7 | 47.1 | 46.5 | 45.9 | 45.3 | 44.6 |
| 27 | 49.2 | 48.7 | 48.3 | 47.8 | 47.3 | 46.7 | 46.2 | 45.6 | 45.0 | 44.3 |
| 28 | 48.6 | 48.2 | 47.8 | 47.3 | 46.8 | 46.3 | 45.8 | 45.2 | 44.6 | 44.0 |
| 29 | 48.1 | 47.7 | 47.3 | 46.8 | 46.4 | 45.9 | 45.4 | 44.8 | 44.3 | 43.7 |
| 30 | 47.5 | 47.1 | 46.7 | 46.3 | 45.9 | 45.4 | 44.9 | 44.4 | 43.9 | 43.3 |
| 31 | 46.9 | 46.5 | 46.2 | 45.8 | 45.4 | 44.9 | 44.5 | 44.0 | 43.5 | 42.9 |
| 32 | 46.2 | 45.9 | 45.6 | 45.2 | 44.8 | 44.4 | 44.0 | 43.5 | 43.0 | 42.5 |
| 33 | 45.6 | 45.3 | 45.0 | 44.6 | 44.3 | 43.9 | 43.5 | 43.0 | 42.6 | 42.1 |
| 34 | 44.9 | 44.6 | 44.3 | 44.0 | 43.7 | 43.3 | 42.9 | 42.5 | 42.1 | 41.6 |
| 35 | 44.2 | 44.0 | 43.7 | 43.4 | 43.1 | 42.7 | 42.4 | 42.0 | 41.6 | 41.1 |
| 36 | 43.5 | 43.3 | 43.0 | 42.7 | 42.4 | 42.1 | 41.8 | 41.4 | 41.0 | 40.6 |
| 37 | 42.8 | 42.5 | 42.3 | 42.1 | 41.8 | 41.5 | 41.2 | 40.8 | 40.5 | 40.1 |
| 38 | 42.0 | 41.8 | 41.6 | 41.4 | 41.1 | 40.8 | 40.6 | 40.2 | 39.9 | 39.5 |
| 39 | 41.3 | 41.1 | 40.9 | 40.7 | 40.4 | 40.2 | 39.9 | 39.6 | 39.3 | 39.0 |
| 40 | 40.5 | 40.3 | 40.1 | 39.9 | 39.7 | 39.5 | 39.2 | 39.0 | 38.7 | 38.4 |
| 41 | 39.7 | 39.5 | 39.4 | 39.2 | 39.0 | 38.8 | 38.5 | 38.3 | 38.0 | 37.7 |
| 42 | 38.9 | 38.8 | 38.6 | 38.4 | 38.3 | 38.1 | 37.8 | 37.6 | 37.4 | 37.1 |
| 43 | 38.1 | 38.0 | 37.8 | 37.7 | 37.5 | 37.3 | 37.1 | 36.9 | 36.7 | 36.4 |
| 44 | 37.3 | 37.2 | 37.0 | 36.9 | 36.7 | 36.6 | 36.4 | 36.2 | 36.0 | 35.8 |
| 45 | 36.5 | 36.3 | 36.2 | 36.1 | 36.0 | 35.8 | 35.6 | 35.5 | 35.3 | 35.1 |
| 46 | 35.6 | 35.5 | 35.4 | 35.3 | 35.2 | 35.0 | 34.9 | 34.7 | 34.5 | 34.4 |
| 47 | 34.8 | 34.7 | 34.6 | 34.5 | 34.4 | 34.3 | 34.1 | 34.0 | 33.8 | 33.6 |
| 48 | 34.0 | 33.9 | 33.8 | 33.7 | 33.6 | 33.5 | 33.4 | 33.2 | 33.1 | 32.9 |
| 49 | 33.1 | 33.0 | 33.0 | 32.9 | 32.8 | 32.7 | 32.6 | 32.4 | 32.3 | 32.2 |
| 50 | 32.3 | 32.2 | 32.1 | 32.1 | 32.0 | 31.9 | 31.8 | 31.7 | 31.5 | 31.4 |
| 51 | 31.4 | 31.4 | 31.3 | 31.2 | 31.2 | 31.1 | 31.0 | 30.9 | 30.8 | 30.6 |
| 52 | 30.6 | 30.5 | 30.5 | 30.4 | 30.3 | 30.3 | 30.2 | 30.1 | 30.0 | 29.9 |
| 53 | 29.7 | 29.7 | 29.6 | 29.6 | 29.5 | 29.5 | 29.4 | 29.3 | 29.2 | 29.1 |
| 54 | 28.9 | 28.9 | 28.8 | 28.8 | 28.7 | 28.6 | 28.6 | 28.5 | 28.4 | 28.3 |
| 55 | 28.1 | 28.0 | 28.0 | 27.9 | 27.9 | 27.8 | 27.8 | 27.7 | 27.6 | 27.5 |
| 56 | 27.2 | 27.2 | 27.1 | 27.1 | 27.0 | 27.0 | 26.9 | 26.9 | 26.8 | 26.7 |
| 57 | 26.4 | 26.3 | 26.3 | 26.3 | 26.2 | 26.2 | 26.1 | 26.1 | 26.0 | 25.9 |
| 58 | 25.5 | 25.5 | 25.5 | 25.4 | 25.4 | 25.4 | 25.3 | 25.3 | 25.2 | 25.1 |
| 59 | 24.7 | 24.7 | 24.6 | 24.6 | 24.6 | 24.5 | 24.5 | 24.5 | 24.4 | 24.3 |
| 60 | 23.9 | 23.8 | 23.8 | 23.8 | 23.8 | 23.7 | 23.7 | 23.6 | 23.6 | 23.5 |
| 61 | 23.0 | 23.0 | 23.0 | 23.0 | 22.9 | 22.9 | 22.9 | 22.8 | 22.8 | 22.7 |
| 62 | 22.2 | 22.2 | 22.2 | 22.1 | 22.1 | 22.1 | 22.1 | 22.0 | 22.0 | 21.9 |
| 63 | 21.4 | 21.4 | 21.3 | 21.3 | 21.3 | 21.3 | 21.3 | 21.2 | 21.2 | 21.2 |
| 64 | 20.6 | 20.6 | 20.5 | 20.5 | 20.5 | 20.5 | 20.5 | 20.4 | 20.4 | 20.4 |
| 65 | 19.8 | 19.8 | 19.7 | 19.7 | 19.7 | 19.7 | 19.7 | 19.6 | 19.6 | 19.6 |
| 66 | 19.0 | 19.0 | 19.0 | 18.9 | 18.9 | 18.9 | 18.9 | 18.9 | 18.8 | 18.8 |
| 67 | 18.2 | 18.2 | 18.2 | 18.2 | 18.2 | 18.1 | 18.1 | 18.1 | 18.1 | 18.1 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 |
|---|---|---|---|---|---|---|---|---|---|---|
| 68 | 17.4 | 17.4 | 17.4 | 17.4 | 17.4 | 17.4 | 17.4 | 17.3 | 17.3 | 17.3 |
| 69 | 16.7 | 16.7 | 16.7 | 16.6 | 16.6 | 16.6 | 16.6 | 16.6 | 16.6 | 16.6 |
| 70 | 15.9 | 15.9 | 15.9 | 15.9 | 15.9 | 15.9 | 15.9 | 15.9 | 15.8 | 15.8 |
| 71 | 15.2 | 15.2 | 15.2 | 15.2 | 15.2 | 15.2 | 15.2 | 15.1 | 15.1 | 15.1 |
| 72 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.5 | 14.4 | 14.4 | 14.4 |
| 73 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.8 | 13.7 | 13.7 |
| 74 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 | 13.1 |
| 75 | 12.5 | 12.5 | 12.5 | 12.4 | 12.4 | 12.4 | 12.4 | 12.4 | 12.4 | 12.4 |
| 76 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 | 11.8 |
| 77 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.1 |
| 78 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.5 |
| 79 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| 80 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 |
| 81 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 |
| 82 | 8.4 | 8.4 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 |
| 83 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 |
| 84 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 |
| 85 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 |
| 86 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 |
| 87 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 |
| 88 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 |
| 89 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 |
| 90 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| 91 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 |
| 92 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 |
| 93 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 |
| 94 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 |
| 95 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 |
| 96 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 |
| 97 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 |
| 98 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 99 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| 100 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 |
| 101 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 102 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 |
| 106 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 |
|---|---|---|---|---|---|---|---|---|---|---|
| 35 | 40.7 | 40.2 | 39.7 | 39.2 | 38.6 | 38.0 | 37.4 | 36.8 | 36.2 | 35.5 |
| 36 | 40.2 | 39.7 | 39.3 | 38.7 | 38.2 | 37.7 | 37.1 | 36.5 | 35.9 | 35.2 |
| 37 | 39.7 | 39.3 | 38.8 | 38.3 | 37.8 | 37.3 | 36.7 | 36.2 | 35.6 | 34.9 |
| 38 | 39.2 | 38.7 | 38.3 | 37.9 | 37.4 | 36.9 | 36.3 | 35.8 | 35.2 | 34.6 |
| 39 | 38.6 | 38.2 | 37.8 | 37.4 | 36.9 | 36.4 | 35.9 | 35.4 | 34.9 | 34.3 |
| 40 | 38.0 | 37.7 | 37.3 | 36.9 | 36.4 | 36.0 | 35.5 | 35.0 | 34.5 | 34.0 |
| 41 | 37.4 | 37.1 | 36.7 | 36.3 | 35.9 | 35.5 | 35.1 | 34.6 | 34.1 | 33.6 |
| 42 | 36.8 | 36.5 | 36.2 | 35.8 | 35.4 | 35.0 | 34.6 | 34.1 | 33.7 | 33.2 |
| 43 | 36.2 | 35.9 | 35.6 | 35.2 | 34.9 | 34.5 | 34.1 | 33.7 | 33.2 | 32.8 |
| 44 | 35.5 | 35.2 | 34.9 | 34.6 | 34.3 | 34.0 | 33.6 | 33.2 | 32.8 | 32.3 |
| 45 | 34.8 | 34.6 | 34.3 | 34.0 | 33.7 | 33.4 | 33.0 | 32.7 | 32.3 | 31.8 |
| 46 | 34.1 | 33.9 | 33.7 | 33.4 | 33.1 | 32.8 | 32.5 | 32.1 | 31.8 | 31.4 |
| 47 | 33.4 | 33.2 | 33.0 | 32.8 | 32.5 | 32.2 | 31.9 | 31.6 | 31.2 | 30.8 |
| 48 | 32.7 | 32.5 | 32.3 | 32.1 | 31.8 | 31.6 | 31.3 | 31.0 | 30.7 | 30.3 |
| 49 | 32.0 | 31.8 | 31.6 | 31.4 | 31.2 | 30.9 | 30.7 | 30.4 | 30.1 | 29.8 |
| 50 | 31.3 | 31.1 | 30.9 | 30.7 | 30.5 | 30.3 | 30.0 | 29.8 | 29.5 | 29.2 |
| 51 | 30.5 | 30.4 | 30.2 | 30.0 | 29.8 | 29.6 | 29.4 | 29.2 | 28.9 | 28.6 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 |
|---|---|---|---|---|---|---|---|---|---|---|
| 52 | 29.7 | 29.6 | 29.5 | 29.3 | 29.1 | 28.9 | 28.7 | 28.5 | 28.3 | 28.0 |
| 53 | 29.0 | 28.9 | 28.7 | 28.6 | 28.4 | 28.2 | 28.1 | 27.9 | 27.6 | 27.4 |
| 54 | 28.2 | 28.1 | 28.0 | 27.8 | 27.7 | 27.5 | 27.4 | 27.2 | 27.0 | 26.8 |
| 55 | 27.4 | 27.3 | 27.2 | 27.1 | 27.0 | 26.8 | 26.7 | 26.5 | 26.3 | 26.1 |
| 56 | 26.7 | 26.6 | 26.5 | 26.3 | 26.2 | 26.1 | 26.0 | 25.8 | 25.6 | 25.4 |
| 57 | 25.9 | 25.8 | 25.7 | 25.6 | 25.5 | 25.4 | 25.2 | 25.1 | 24.9 | 24.8 |
| 58 | 25.1 | 25.0 | 24.9 | 24.8 | 24.7 | 24.6 | 24.5 | 24.4 | 24.2 | 24.1 |
| 59 | 24.3 | 24.2 | 24.1 | 24.1 | 24.0 | 23.9 | 23.8 | 23.6 | 23.5 | 23.4 |
| 60 | 23.5 | 23.4 | 23.4 | 23.3 | 23.2 | 23.1 | 23.0 | 22.9 | 22.8 | 22.7 |
| 61 | 22.7 | 22.6 | 22.6 | 22.5 | 22.4 | 22.4 | 22.3 | 22.2 | 22.1 | 22.0 |
| 62 | 21.9 | 21.9 | 21.8 | 21.7 | 21.7 | 21.6 | 21.5 | 21.4 | 21.3 | 21.2 |
| 63 | 21.1 | 21.1 | 21.0 | 21.0 | 20.9 | 20.8 | 20.8 | 20.7 | 20.6 | 20.5 |
| 64 | 20.3 | 20.3 | 20.2 | 20.2 | 20.1 | 20.1 | 20.0 | 20.0 | 19.9 | 19.8 |
| 65 | 19.6 | 19.5 | 19.5 | 19.4 | 19.4 | 19.3 | 19.3 | 19.2 | 19.1 | 19.1 |
| 66 | 18.8 | 18.8 | 18.7 | 18.7 | 18.6 | 18.6 | 18.5 | 18.5 | 18.4 | 18.4 |
| 67 | 18.0 | 18.0 | 18.0 | 17.9 | 17.9 | 17.9 | 17.8 | 17.8 | 17.7 | 17.6 |
| 68 | 17.3 | 17.3 | 17.2 | 17.2 | 17.2 | 17.1 | 17.1 | 17.0 | 17.0 | 16.9 |
| 69 | 16.5 | 16.5 | 16.5 | 16.5 | 16.4 | 16.4 | 16.4 | 16.3 | 16.3 | 16.2 |
| 70 | 15.8 | 15.8 | 15.8 | 15.7 | 15.7 | 15.7 | 15.6 | 15.6 | 15.6 | 15.5 |
| 71 | 15.1 | 15.1 | 15.1 | 15.0 | 15.0 | 15.0 | 15.0 | 14.9 | 14.9 | 14.9 |
| 72 | 14.4 | 14.4 | 14.4 | 14.3 | 14.3 | 14.3 | 14.3 | 14.2 | 14.2 | 14.2 |
| 73 | 13.7 | 13.7 | 13.7 | 13.7 | 13.7 | 13.6 | 13.6 | 13.6 | 13.6 | 13.5 |
| 74 | 13.1 | 13.0 | 13.0 | 13.0 | 13.0 | 13.0 | 13.0 | 12.9 | 12.9 | 12.9 |
| 75 | 12.4 | 12.4 | 12.4 | 12.4 | 12.3 | 12.3 | 12.3 | 12.3 | 12.3 | 12.2 |
| 76 | 11.8 | 11.8 | 11.7 | 11.7 | 11.7 | 11.7 | 11.7 | 11.7 | 11.6 | 11.6 |
| 77 | 11.1 | 11.1 | 11.1 | 11.1 | 11.1 | 11.1 | 11.1 | 11.1 | 11.0 | 11.0 |
| 78 | 10.5 | 10.5 | 10.5 | 10.5 | 10.5 | 10.5 | 10.5 | 10.5 | 10.5 | 10.4 |
| 79 | 10.0 | 10.0 | 9.9 | 9.9 | 9.9 | 9.9 | 9.9 | 9.9 | 9.9 | 9.9 |
| 80 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.4 | 9.3 | 9.3 | 9.3 |
| 81 | 8.9 | 8.8 | 8.8 | 8.8 | 8.8 | 8.8 | 8.8 | 8.8 | 8.8 | 8.8 |
| 82 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 | 8.3 |
| 83 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 | 7.8 |
| 84 | 7.3 | 7.3 | 7.3 | 7.3 | 7.3 | 7.3 | 7.3 | 7.3 | 7.3 | 7.3 |
| 85 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 |
| 86 | 6.5 | 6.5 | 6.5 | 6.5 | 6.4 | 6.4 | 6.4 | 6.4 | 6.4 | 6.4 |
| 87 | 6.1 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 |
| 88 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.6 | 5.6 | 5.6 |
| 89 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 |
| 90 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| 91 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.6 | 4.6 |
| 92 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 |
| 93 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 |
| 94 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 |
| 95 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 |
| 96 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 |
| 97 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 |
| 98 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 99 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| 100 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.6 | 2.6 |
| 101 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 102 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 |
| 106 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 |
|---|---|---|---|---|---|---|---|---|---|---|
| 45 | 31.4 | 30.9 | 30.5 | 30.0 | 29.4 | 28.9 | 28.3 | 27.7 | 27.1 | 26.5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 |
|---|---|---|---|---|---|---|---|---|---|---|
| 46 | 30.9 | 30.5 | 30.0 | 29.6 | 29.1 | 28.5 | 28.0 | 27.4 | 26.9 | 26.3 |
| 47 | 30.5 | 30.0 | 29.6 | 29.2 | 28.7 | 28.2 | 27.7 | 27.1 | 26.6 | 26.0 |
| 48 | 30.0 | 29.6 | 29.2 | 28.7 | 28.3 | 27.8 | 27.3 | 26.8 | 26.3 | 25.7 |
| 49 | 29.4 | 29.1 | 28.7 | 28.3 | 27.9 | 27.4 | 26.9 | 26.5 | 25.9 | 25.4 |
| 50 | 28.9 | 28.5 | 28.2 | 27.4 | 27.4 | 27.0 | 26.5 | 26.1 | 25.6 | 25.1 |
| 51 | 28.3 | 28.0 | 27.7 | 27.3 | 26.9 | 26.5 | 26.1 | 25.7 | 25.2 | 24.7 |
| 52 | 27.7 | 27.4 | 27.1 | 26.8 | 26.5 | 26.1 | 25.7 | 25.3 | 24.8 | 24.4 |
| 53 | 27.1 | 26.9 | 26.6 | 26.3 | 25.9 | 25.6 | 25.2 | 24.8 | 24.4 | 24.0 |
| 54 | 26.5 | 26.3 | 26.0 | 25.7 | 25.4 | 25.1 | 24.7 | 24.4 | 24.0 | 23.6 |
| 55 | 25.9 | 25.7 | 25.4 | 25.1 | 24.9 | 24.6 | 24.2 | 23.9 | 23.5 | 23.2 |
| 56 | 25.2 | 25.0 | 24.8 | 24.6 | 24.3 | 24.0 | 23.7 | 23.4 | 23.1 | 22.7 |
| 57 | 24.6 | 24.4 | 24.2 | 24.0 | 23.7 | 23.5 | 23.2 | 22.9 | 22.6 | 22.2 |
| 58 | 23.9 | 23.7 | 23.5 | 23.3 | 23.1 | 22.9 | 22.6 | 22.4 | 22.1 | 21.7 |
| 59 | 23.2 | 23.1 | 22.9 | 22.7 | 22.5 | 22.3 | 22.1 | 21.8 | 21.5 | 21.2 |
| 60 | 22.5 | 22.4 | 22.2 | 22.1 | 21.9 | 21.7 | 21.5 | 21.2 | 21.0 | 20.7 |
| 61 | 21.8 | 21.7 | 21.6 | 21.4 | 21.2 | 21.1 | 20.9 | 20.6 | 20.4 | 20.2 |
| 62 | 21.1 | 21.0 | 20.9 | 20.7 | 20.6 | 20.4 | 20.2 | 20.0 | 19.8 | 19.6 |
| 63 | 20.4 | 20.3 | 20.2 | 20.1 | 19.9 | 19.8 | 19.6 | 19.4 | 19.2 | 19.0 |
| 64 | 19.7 | 19.6 | 19.5 | 19.4 | 19.3 | 19.1 | 19.0 | 18.8 | 18.6 | 18.5 |
| 65 | 19.0 | 18.9 | 18.8 | 18.7 | 18.6 | 18.5 | 18.3 | 18.2 | 18.0 | 17.9 |
| 66 | 18.3 | 18.2 | 18.1 | 18.0 | 17.9 | 17.8 | 17.7 | 17.6 | 17.4 | 17.3 |
| 67 | 17.6 | 17.5 | 17.4 | 17.3 | 17.3 | 17.2 | 17.1 | 16.9 | 16.8 | 16.7 |
| 68 | 16.9 | 16.8 | 16.7 | 16.7 | 16.6 | 16.5 | 16.4 | 16.3 | 16.2 | 16.1 |
| 69 | 16.2 | 16.1 | 16.1 | 16.0 | 15.9 | 15.8 | 15.8 | 15.7 | 15.6 | 15.4 |
| 70 | 15.5 | 15.4 | 15.4 | 15.3 | 15.3 | 15.2 | 15.1 | 15.0 | 14.9 | 14.8 |
| 71 | 14.8 | 14.8 | 14.7 | 14.7 | 14.6 | 14.5 | 14.5 | 14.4 | 14.3 | 14.2 |
| 72 | 14.1 | 14.1 | 14.1 | 14.0 | 14.0 | 13.9 | 13.8 | 13.8 | 13.7 | 13.6 |
| 73 | 13.5 | 13.5 | 13.4 | 13.4 | 13.3 | 13.3 | 13.2 | 13.2 | 13.1 | 13.0 |
| 74 | 12.8 | 12.8 | 12.8 | 12.7 | 12.7 | 12.7 | 12.6 | 12.6 | 12.5 | 12.4 |
| 75 | 12.2 | 12.2 | 12.2 | 12.1 | 12.1 | 12.1 | 12.0 | 12.0 | 11.9 | 11.9 |
| 76 | 11.6 | 11.6 | 11.6 | 11.5 | 11.5 | 11.5 | 11.4 | 11.4 | 11.3 | 11.3 |
| 77 | 11.0 | 11.0 | 11.0 | 10.9 | 10.9 | 10.9 | 10.8 | 10.8 | 10.8 | 10.7 |
| 78 | 10.4 | 10.4 | 10.4 | 10.4 | 10.3 | 10.3 | 10.3 | 10.2 | 10.2 | 10.2 |
| 79 | 9.9 | 9.8 | 9.8 | 9.8 | 9.8 | 9.8 | 9.7 | 9.7 | 9.7 | 9.6 |
| 80 | 9.3 | 9.3 | 9.3 | 9.3 | 9.2 | 9.2 | 9.2 | 9.2 | 9.1 | 9.1 |
| 81 | 8.8 | 8.8 | 8.7 | 8.7 | 8.7 | 8.7 | 8.7 | 8.7 | 8.6 | 8.6 |
| 82 | 8.3 | 8.2 | 8.2 | 8.2 | 8.2 | 8.2 | 8.2 | 8.2 | 8.1 | 8.1 |
| 83 | 7.8 | 7.8 | 7.7 | 7.7 | 7.7 | 7.7 | 7.7 | 7.7 | 7.7 | 7.6 |
| 84 | 7.3 | 7.3 | 7.3 | 7.3 | 7.3 | 7.2 | 7.2 | 7.2 | 7.2 | 7.2 |
| 85 | 6.8 | 6.8 | 6.8 | 6.8 | 6.8 | 6.8 | 6.8 | 6.8 | 6.8 | 6.7 |
| 86 | 6.4 | 6.4 | 6.4 | 6.4 | 6.4 | 6.4 | 6.4 | 6.4 | 6.3 | 6.3 |
| 87 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 5.9 |
| 88 | 5.6 | 5.6 | 5.6 | 5.6 | 5.6 | 5.6 | 5.6 | 5.6 | 5.6 | 5.6 |
| 89 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.2 | 5.2 | 5.2 | 5.2 |
| 90 | 5.0 | 4.9 | 4.9 | 4.9 | 4.9 | 4.9 | 4.9 | 4.9 | 4.9 | 4.9 |
| 91 | 4.6 | 4.6 | 4.6 | 4.6 | 4.6 | 4.6 | 4.6 | 4.6 | 4.6 | 4.6 |
| 92 | 4.4 | 4.4 | 4.4 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 |
| 93 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 |
| 94 | 3.9 | 3.9 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 |
| 95 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 |
| 96 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 |
| 97 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 |
| 98 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 99 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| 100 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 |
| 101 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 102 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 |
| 106 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 |
|---|---|---|---|---|---|---|---|---|---|---|
| 55 | 22.7 | 22.3 | 21.9 | 21.4 | 20.9 | 20.4 | 19.9 | 19.4 | 18.8 | 18.3 |
| 56 | 22.3 | 21.9 | 21.5 | 21.1 | 20.6 | 20.1 | 19.6 | 19.1 | 18.6 | 18.0 |
| 57 | 21.9 | 21.5 | 21.1 | 20.7 | 20.3 | 19.8 | 19.3 | 18.8 | 18.3 | 17.8 |
| 58 | 21.4 | 21.1 | 20.7 | 20.3 | 19.9 | 19.5 | 19.0 | 18.5 | 18.0 | 17.5 |
| 59 | 20.9 | 20.6 | 20.3 | 19.9 | 19.5 | 19.1 | 18.7 | 18.2 | 17.7 | 17.3 |
| 60 | 20.4 | 20.1 | 19.8 | 19.5 | 19.1 | 18.7 | 18.3 | 17.9 | 17.4 | 17.0 |
| 61 | 29.9 | 19.6 | 19.3 | 19.0 | 18.7 | 18.3 | 17.9 | 17.5 | 17.1 | 16.7 |
| 62 | 19.4 | 19.1 | 18.8 | 18.5 | 18.2 | 17.9 | 17.5 | 17.1 | 16.8 | 16.3 |
| 63 | 18.8 | 18.6 | 18.3 | 18.0 | 17.7 | 17.4 | 17.1 | 16.8 | 16.4 | 16.0 |
| 64 | 18.3 | 18.0 | 17.8 | 17.5 | 17.3 | 17.0 | 16.7 | 16.3 | 16.0 | 15.6 |
| 65 | 17.7 | 17.5 | 17.3 | 17.0 | 16.8 | 16.5 | 16.2 | 15.9 | 15.6 | 15.3 |
| 66 | 17.1 | 16.9 | 16.7 | 16.5 | 16.3 | 16.0 | 15.8 | 15.5 | 15.2 | 14.9 |
| 67 | 16.5 | 16.3 | 16.2 | 16.0 | 15.8 | 15.5 | 15.3 | 15.0 | 14.7 | 14.5 |
| 68 | 15.9 | 15.8 | 15.6 | 15.4 | 15.2 | 15.0 | 14.8 | 14.6 | 14.3 | 14.0 |
| 69 | 15.3 | 15.2 | 15.0 | 14.9 | 14.7 | 14.5 | 14.3 | 14.1 | 13.9 | 13.6 |
| 70 | 14.7 | 14.6 | 14.5 | 14.3 | 14.2 | 14.0 | 13.8 | 13.6 | 13.4 | 13.2 |
| 71 | 14.1 | 14.0 | 13.9 | 13.8 | 13.6 | 13.5 | 13.3 | 13.1 | 12.9 | 12.7 |
| 72 | 13.5 | 13.4 | 13.3 | 13.2 | 13.1 | 12.9 | 12.8 | 12.6 | 12.4 | 12.3 |
| 73 | 13.0 | 12.9 | 12.8 | 12.7 | 12.5 | 12.4 | 12.3 | 12.1 | 12.0 | 11.8 |
| 74 | 12.4 | 12.3 | 12.2 | 12.1 | 12.0 | 11.9 | 11.8 | 11.6 | 11.5 | 11.3 |
| 75 | 11.8 | 11.7 | 11.7 | 11.6 | 11.5 | 11.4 | 11.3 | 11.1 | 11.0 | 10.9 |
| 76 | 11.2 | 11.2 | 11.1 | 11.0 | 10.9 | 10.9 | 10.8 | 10.6 | 10.5 | 10.4 |
| 77 | 10.7 | 10.6 | 10.6 | 10.5 | 10.4 | 10.3 | 10.3 | 10.2 | 10.0 | 9.9 |
| 78 | 10.1 | 10.1 | 10.0 | 10.0 | 9.9 | 9.8 | 9.8 | 9.7 | 9.6 | 9.5 |
| 79 | 9.6 | 9.6 | 9.5 | 9.5 | 9.4 | 9.3 | 9.3 | 9.2 | 9.1 | 9.0 |
| 80 | 9.1 | 9.0 | 9.0 | 9.0 | 8.9 | 8.9 | 8.8 | 8.7 | 8.7 | 8.6 |
| 81 | 8.6 | 8.5 | 8.5 | 8.5 | 8.4 | 8.4 | 8.3 | 8.3 | 8.2 | 8.1 |
| 82 | 8.1 | 8.1 | 8.0 | 8.0 | 8.0 | 7.9 | 7.9 | 7.8 | 7.8 | 7.7 |
| 83 | 7.6 | 7.6 | 7.6 | 7.5 | 7.5 | 7.5 | 7.4 | 7.4 | 7.3 | 7.3 |
| 84 | 7.2 | 7.1 | 7.1 | 7.1 | 7.1 | 7.0 | 7.0 | 7.0 | 6.9 | 6.9 |
| 85 | 6.7 | 6.7 | 6.7 | 6.7 | 6.6 | 6.6 | 6.6 | 6.5 | 6.5 | 6.5 |
| 86 | 6.3 | 6.3 | 6.3 | 6.3 | 6.2 | 6.2 | 6.2 | 6.2 | 6.1 | 6.1 |
| 87 | 5.9 | 5.9 | 5.9 | 5.9 | 5.9 | 5.8 | 5.8 | 5.8 | 5.8 | 5.7 |
| 88 | 5.6 | 5.5 | 5.5 | 5.5 | 5.5 | 5.5 | 5.5 | 5.4 | 5.4 | 5.4 |
| 89 | 5.2 | 5.2 | 5.2 | 5.2 | 5.2 | 5.1 | 5.1 | 5.1 | 5.1 | 5.1 |
| 90 | 4.9 | 4.9 | 4.9 | 4.9 | 4.9 | 4.8 | 4.8 | 4.8 | 4.8 | 4.8 |
| 91 | 4.6 | 4.6 | 4.6 | 4.6 | 4.6 | 4.5 | 4.5 | 4.5 | 4.5 | 4.5 |
| 92 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 | 4.2 | 4.2 | 4.2 |
| 93 | 4.1 | 4.1 | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 |
| 94 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 | 3.7 |
| 95 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.5 | 3.5 |
| 96 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.3 | 3.3 | 3.3 |
| 97 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.1 | 3.1 |
| 98 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 99 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| 100 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 |
| 101 | 2.5 | 2.4 | 2.4 | 2.4 | 2.4 | 2.4 | 2.4 | 2.4 | 2.4 | 2.4 |
| 102 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.2 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.7 | 1.7 | 1.7 | 1.7 |
| 106 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 |
|---|---|---|---|---|---|---|---|---|---|---|
| 65 | 14.9 | 14.5 | 14.1 | 13.7 | 13.3 | 12.9 | 12.5 | 12.0 | 11.6 | 11.2 |
| 66 | 14.5 | 14.2 | 13.8 | 13.4 | 13.1 | 12.6 | 12.2 | 11.8 | 11.4 | 11.0 |
| 67 | 14.1 | 13.8 | 13.5 | 13.1 | 12.8 | 12.4 | 12.0 | 11.6 | 11.2 | 10.8 |
| 68 | 13.7 | 13.4 | 13.1 | 12.8 | 12.5 | 12.1 | 11.7 | 11.4 | 11.0 | 10.6 |
| 69 | 13.3 | 13.1 | 12.8 | 12.5 | 12.1 | 11.8 | 11.4 | 11.1 | 10.7 | 10.4 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 |
|---|---|---|---|---|---|---|---|---|---|---|
| 70 | 12.9 | 12.6 | 12.4 | 12.1 | 11.8 | 11.5 | 11.2 | 10.8 | 10.5 | 10.1 |
| 71 | 12.5 | 12.2 | 12.0 | 11.7 | 11.4 | 11.2 | 10.9 | 10.5 | 10.2 | 9.9 |
| 72 | 12.0 | 11.8 | 11.6 | 11.4 | 11.1 | 10.8 | 10.5 | 10.2 | 9.9 | 9.6 |
| 73 | 11.6 | 11.4 | 11.2 | 11.0 | 10.7 | 10.5 | 10.2 | 9.9 | 9.7 | 9.4 |
| 74 | 11.2 | 11.0 | 10.8 | 10.6 | 10.4 | 10.1 | 9.9 | 9.6 | 9.4 | 9.1 |
| 75 | 10.7 | 10.5 | 10.4 | 10.2 | 10.0 | 9.8 | 9.5 | 9.3 | 9.1 | 8.8 |
| 76 | 10.3 | 10.1 | 9.9 | 9.8 | 9.6 | 9.4 | 9.2 | 9.0 | 8.8 | 8.5 |
| 77 | 9.8 | 9.7 | 9.5 | 9.4 | 9.2 | 9.0 | 8.8 | 8.6 | 8.4 | 8.2 |
| 78 | 9.4 | 9.2 | 9.1 | 9.0 | 8.8 | 8.7 | 8.5 | 8.3 | 8.1 | 7.9 |
| 79 | 8.9 | 8.8 | 8.7 | 8.6 | 8.4 | 8.3 | 8.1 | 8.0 | 7.8 | 7.6 |
| 80 | 8.5 | 8.4 | 8.3 | 8.2 | 8.0 | 7.9 | 7.8 | 7.6 | 7.5 | 7.3 |
| 81 | 8.0 | 8.0 | 7.9 | 7.9 | 7.7 | 7.5 | 7.4 | 7.3 | 7.1 | 7.0 |
| 82 | 7.6 | 7.5 | 7.5 | 7.4 | 7.3 | 7.2 | 7.1 | 6.9 | 6.8 | 6.7 |
| 83 | 7.2 | 7.1 | 7.1 | 7.0 | 6.9 | 6.8 | 6.7 | 6.6 | 6.5 | 6.4 |
| 84 | 6.8 | 6.7 | 6.7 | 6.6 | 6.5 | 6.4 | 6.4 | 6.3 | 6.2 | 6.0 |
| 85 | 6.4 | 6.4 | 6.3 | 6.2 | 6.2 | 6.1 | 6.0 | 5.9 | 5.8 | 5.7 |
| 86 | 6.0 | 6.0 | 5.9 | 5.9 | 5.8 | 5.8 | 5.7 | 5.6 | 5.5 | 5.4 |
| 87 | 5.7 | 5.6 | 5.6 | 5.6 | 5.5 | 5.4 | 5.4 | 5.3 | 5.2 | 5.2 |
| 88 | 5.3 | 5.3 | 5.3 | 5.2 | 5.2 | 5.1 | 5.1 | 5.0 | 5.0 | 4.9 |
| 89 | 5.0 | 5.0 | 5.0 | 4.9 | 4.9 | 4.8 | 4.8 | 4.7 | 4.7 | 4.6 |
| 90 | 4.7 | 4.7 | 4.7 | 4.6 | 4.6 | 4.6 | 4.5 | 4.5 | 4.4 | 4.4 |
| 91 | 4.5 | 4.4 | 4.4 | 4.4 | 4.3 | 4.3 | 4.3 | 4.2 | 4.2 | 4.1 |
| 92 | 4.2 | 4.2 | 4.1 | 4.1 | 4.1 | 4.1 | 4.0 | 4.0 | 3.9 | 3.9 |
| 93 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.8 | 3.8 | 3.8 | 3.7 | 3.7 |
| 94 | 3.7 | 3.7 | 3.7 | 3.7 | 3.6 | 3.6 | 3.6 | 3.6 | 3.5 | 3.5 |
| 95 | 3.5 | 3.5 | 3.5 | 3.5 | 3.4 | 3.4 | 3.4 | 3.4 | 3.3 | 3.3 |
| 96 | 3.3 | 3.3 | 3.3 | 3.3 | 3.3 | 3.2 | 3.2 | 3.2 | 3.2 | 3.1 |
| 97 | 3.1 | 3.1 | 3.1 | 3.1 | 3.1 | 3.1 | 3.0 | 3.0 | 3.0 | 3.0 |
| 98 | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 | 2.8 | 2.8 |
| 99 | 2.8 | 2.8 | 2.8 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.6 |
| 100 | 2.6 | 2.6 | 2.6 | 2.6 | 2.6 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 101 | 2.4 | 2.4 | 2.4 | 2.4 | 2.4 | 2.4 | 2.4 | 2.4 | 2.3 | 2.3 |
| 102 | 2.2 | 2.2 | 2.2 | 2.2 | 2.2 | 2.2 | 2.2 | 2.2 | 2.2 | 2.2 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | .19 | 1.9 |
| 105 | 1.7 | 1.7 | 1.7 | 1.7 | .17 | 1.7 | 1.7 | 1.7 | 1.7 | 1.7 |
| 106 | 1.6 | 1.6 | .16 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.5 | 1.5 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .6 | .6 | .6 | .6 | .6 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .5 | .5 | .5 | .5 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 |
|---|---|---|---|---|---|---|---|---|---|---|
| 75 | 8.6 | 8.3 | 8.0 | 7.7 | 7.4 | 7.1 | 6.8 | 6.5 | 6.2 | 5.9 |
| 76 | 8.3 | 8.0 | 7.8 | 7.5 | 7.2 | 6.9 | 6.7 | 6.4 | 6.1 | 5.8 |
| 77 | 8.0 | 7.8 | 7.5 | 7.3 | 7.0 | 6.8 | 6.5 | 6.2 | 5.9 | 5.7 |
| 78 | 7.7 | 7.5 | 7.3 | 7.0 | 6.8 | 6.6 | 6.3 | 6.0 | 5.8 | 5.5 |
| 79 | 7.4 | 7.2 | 7.0 | 6.8 | 6.6 | 6.3 | 6.1 | 5.9 | 5.6 | 5.4 |
| 80 | 7.1 | 6.9 | 6.8 | 6.6 | 6.3 | 6.1 | 5.9 | 5.7 | 5.5 | 5.2 |
| 81 | 6.8 | 6.7 | 6.5 | 6.3 | 6.1 | 5.9 | 5.7 | 5.5 | 5.3 | 5.1 |
| 82 | 6.5 | 6.4 | 6.2 | 6.0 | 5.9 | 5.7 | 5.5 | 5.3 | 5.1 | 4.9 |
| 83 | 6.2 | 6.1 | 5.9 | 5.8 | 5.6 | 5.5 | 5.3 | 5.1 | 4.9 | 4.7 |
| 84 | 5.9 | 5.8 | 5.7 | 5.5 | 5.4 | 5.2 | 5.1 | 4.9 | 4.7 | 4.6 |
| 85 | 5.6 | 5.5 | 5.4 | 5.3 | 5.2 | 5.0 | 4.9 | 4.7 | 4.6 | 4.4 |
| 86 | 5.4 | 5.3 | 5.1 | 5.0 | 4.9 | 4.8 | 4.7 | 4.5 | 4.4 | 4.2 |
| 87 | 5.1 | 5.0 | 4.9 | 4.8 | 4.7 | 4.6 | 4.4 | 4.3 | 4.2 | 4.1 |
| 88 | 4.8 | 4.7 | 4.6 | 4.5 | 4.4 | 4.3 | 4.2 | 4.1 | 4.0 | 3.9 |
| 89 | 4.5 | 4.5 | 4.4 | 4.3 | 4.2 | 4.1 | 4.0 | 3.9 | 3.8 | 3.7 |
| 90 | 4.3 | 4.2 | 4.2 | 4.1 | 4.0 | 3.9 | 3.8 | 3.8 | 3.7 | 3.5 |
| 91 | 4.1 | 4.0 | 4.0 | 3.9 | 3.8 | 3.7 | 3.7 | 3.6 | 3.5 | 3.4 |
| 92 | 3.9 | 3.8 | 3.7 | 3.7 | 3.6 | 3.6 | 3.5 | 3.4 | 3.3 | 3.2 |
| 93 | 3.7 | 3.6 | 3.6 | 3.5 | 3.4 | 3.4 | 3.3 | 3.2 | 3.2 | 3.1 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 |
|---|---|---|---|---|---|---|---|---|---|---|
| 94 | 3.5 | 3.4 | 3.4 | 3.3 | 3.3 | 3.2 | 3.2 | 3.1 | 3.0 | 3.0 |
| 95 | 3.3 | 3.2 | 3.2 | 3.2 | 3.1 | 3.1 | 3.0 | 3.0 | 2.9 | 2.8 |
| 96 | 3.1 | 3.1 | 3.0 | 3.0 | 3.0 | 2.9 | 2.9 | 2.8 | 2.8 | 2.7 |
| 97 | 2.9 | 2.9 | 2.9 | 2.9 | 2.8 | 2.8 | 2.7 | 2.7 | 2.6 | 2.6 |
| 98 | 2.8 | 2.8 | 2.7 | 2.7 | 2.7 | 2.6 | 2.6 | 2.6 | 2.5 | 2.5 |
| 99 | 2.6 | 2.6 | 2.6 | 2.6 | 2.5 | 2.5 | 2.5 | 2.4 | 2.4 | 2.3 |
| 100 | 2.5 | 2.5 | 2.4 | 2.4 | 2.4 | 2.4 | 2.3 | 2.3 | 2.3 | 2.2 |
| 101 | 2.3 | 2.3 | 2.3 | 2.3 | 2.2 | 2.2 | 2.2 | 2.2 | 2.1 | 2.1 |
| 102 | 2.2 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.0 | 2.0 | 2.0 | 2.0 |
| 103 | 2.0 | 2.0 | 2.0 | 2.0 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.8 |
| 104 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.7 | 1.7 | 1.7 |
| 105 | 1.7 | 1.7 | 1.7 | 1.7 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 106 | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 1.4 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.3 | 1.3 | 1.3 | 1.3 |
| 108 | 1.3 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .8 | .8 |
| 112 | .8 | .8 | .8 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 113 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 114 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 |
|---|---|---|---|---|---|---|---|---|---|---|
| 85 | 4.2 | 4.1 | 3.9 | 3.8 | 3.6 | 3.4 | 3.3 | 3.2 | 3.0 | 2.9 |
| 86 | 4.1 | 3.9 | 3.8 | 3.6 | 3.5 | 3.3 | 3.2 | 3.1 | 2.9 | 2.8 |
| 87 | 3.9 | 3.8 | 3.6 | 3.5 | 3.4 | 3.2 | 3.1 | 3.0 | 2.8 | 2.7 |
| 88 | 3.8 | 3.6 | 3.5 | 3.4 | 3.2 | 3.1 | 3.0 | 2.9 | 2.8 | 2.6 |
| 89 | 3.6 | 3.5 | 3.4 | 3.2 | 3.1 | 3.0 | 2.9 | 2.8 | 2.7 | 2.6 |
| 90 | 3.4 | 3.3 | 3.2 | 3.1 | 3.0 | 2.9 | 2.8 | 2.7 | 2.6 | 2.5 |
| 91 | 3.3 | 3.2 | 3.1 | 3.0 | 2.9 | 2.8 | 2.7 | 2.6 | 2.5 | 2.4 |
| 92 | 3.2 | 3.1 | 3.0 | 2.9 | 2.8 | 2.7 | 2.6 | 2.5 | 2.4 | 2.3 |
| 93 | 3.0 | 2.9 | 2.8 | 2.8 | 2.7 | 2.6 | 2.5 | 2.4 | 2.3 | 2.3 |
| 94 | 2.9 | 2.8 | 2.7 | 2.6 | 2.6 | 2.5 | 2.4 | 2.3 | 2.3 | 2.2 |
| 95 | 2.8 | 2.7 | 2.6 | 2.5 | 2.5 | 2.4 | 2.3 | 2.2 | 2.2 | 2.1 |
| 96 | 2.6 | 2.6 | 2.5 | 2.4 | 2.4 | 2.3 | 2.2 | 2.2 | 2.1 | 2.0 |
| 97 | 2.5 | 2.5 | 2.4 | 2.3 | 2.3 | 2.2 | 2.2 | 2.1 | 2.0 | 2.0 |
| 98 | 2.4 | 2.4 | 2.3 | 2.2 | 2.2 | 2.1 | 2.1 | 2.0 | 2.0 | 1.9 |
| 99 | 2.3 | 2.2 | 2.2 | 2.1 | 2.1 | 2.0 | 2.0 | 1.9 | 1.9 | 1.8 |
| 100 | 2.2 | 2.1 | 2.1 | 2.0 | 2.0 | 1.9 | 1.9 | 1.9 | 1.8 | 1.8 |
| 101 | 2.1 | 2.0 | 2.0 | 1.9 | 1.9 | 1.9 | 1.8 | 1.8 | 1.7 | 1.7 |
| 102 | 1.9 | 1.9 | 1.9 | 1.8 | 1.8 | 1.8 | 1.7 | 1.7 | 1.6 | 1.6 |
| 103 | 1.8 | 1.8 | 1.8 | 1.7 | 1.7 | 1.7 | 1.6 | 1.6 | 1.5 | 1.5 |
| 104 | 1.7 | 1.7 | 1.6 | 1.6 | 1.6 | 1.5 | 1.5 | 1.5 | 1.5 | 1.4 |
| 105 | 1.6 | 1.5 | 1.5 | 1.5 | 1.5 | 1.4 | 1.4 | 1.4 | 1.4 | 1.3 |
| 106 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.3 | 1.3 | 1.3 | 1.3 | 1.2 |
| 107 | 1.3 | 1.3 | 1.3 | 1.3 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 |
| 108 | 1.2 | 1.2 | 1.2 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 109 | 1.1 | 1.1 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 110 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 111 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 112 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 113 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 114 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 |
|---|---|---|---|---|---|---|---|---|---|---|
| 95 | 2.0 | 2.0 | 1.9 | 1.8 | 1.8 | 1.7 | 1.6 | 1.6 | 1.5 | 1.4 |
| 96 | 2.0 | 1.9 | 1.9 | 1.8 | 1.7 | 1.7 | 1.6 | 1.5 | 1.5 | 1.4 |
| 97 | 1.9 | 1.9 | 1.8 | 1.7 | 1.7 | 1.6 | 1.6 | 1.5 | 1.4 | 1.3 |
| 98 | 1.8 | 1.8 | 1.7 | 1.7 | 1.6 | 1.6 | 1.5 | 1.5 | 1.4 | 1.3 |
| 99 | 1.8 | 1.7 | 1.7 | 1.6 | 1.6 | 1.5 | 1.5 | 1.4 | 1.4 | 1.3 |
| 100 | 1.7 | 1.7 | 1.6 | 1.6 | 1.5 | 1.5 | 1.4 | 1.4 | 1.3 | 1.3 |

TABLE VIA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

| Ages | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 |
|---|---|---|---|---|---|---|---|---|---|---|
| 101 .................... | 1.6 | 1.6 | 1.6 | 1.5 | 1.5 | 1.4 | 1.4 | 1.3 | 1.3 | 1.2 |
| 102 .................... | 1.6 | 1.5 | 1.5 | 1.5 | 1.4 | 1.4 | 1.3 | 1.3 | 1.2 | 1.2 |
| 103 .................... | 1.5 | 1.5 | 1.4 | 1.4 | 1.4 | 1.3 | 1.3 | 1.2 | 1.2 | 1.1 |
| 104 .................... | 1.4 | 1.4 | 1.3 | 1.3 | 1.3 | 1.3 | 1.2 | 1.2 | 1.1 | 1.1 |
| 105 .................... | 1.3 | 1.3 | 1.3 | 1.2 | 1.2 | 1.2 | 1.2 | 1.1 | 1.1 | 1.0 |
| 106 .................... | 1.2 | 1.2 | 1.2 | 1.2 | 1.1 | 1.1 | 1.1 | 1.1 | 1.0 | 1.0 |
| 107 .................... | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.0 | 1.0 | 1.0 | 1.0 | 9 |
| 108 .................... | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | .9 | .9 | .9 |
| 109 .................... | 1.0 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .8 | .8 |
| 110 .................... | .9 | .9 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 111 .................... | .8 | .8 | .8 | .8 | .8 | .7 | .7 | .7 | .7 | .7 |
| 112 .................... | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .6 | .6 |
| 113 .................... | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 114 .................... | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |
| 115 .................... | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIAA—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

| Ages | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 | 114 | 115 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 105 .. | 1.0 | 1.0 | .9 | .9 | .8 | .7 | .7 | .6 | .6 | .5 | .5 |
| 106 .. | 1.0 | .9 | .9 | .8 | .8 | .7 | .7 | .6 | .6 | .5 | .5 |
| 107 .. | .9 | .9 | .8 | .8 | .7 | .7 | .7 | .6 | .6 | .5 | .5 |
| 108 .. | .9 | .8 | .8 | .8 | .7 | .7 | .6 | .6 | .5 | .5 | .5 |
| 109 .. | .8 | .8 | .7 | .7 | .7 | .7 | .6 | .6 | .5 | .5 | .5 |
| 110 .. | .7 | .7 | .7 | .7 | .7 | .6 | .6 | .6 | .5 | .5 | .5 |
| 111 .. | .7 | .7 | .7 | .6 | .6 | .6 | .6 | .5 | .5 | .5 | .5 |
| 112 .. | .6 | .6 | .6 | .6 | .6 | .6 | .5 | .5 | .5 | .5 | .5 |
| 113 .. | .6 | .6 | .6 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |
| 114 .. | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |
| 115 .. | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 5 ........................ | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 6 ........................ | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7 ........................ | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8 ........................ | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 9 ........................ | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 10 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 11 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 12 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 13 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 14 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 15 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 16 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 17 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 18 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 19 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 20 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 21 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 22 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 23 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 24 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 25 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 26 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 27 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 28 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 29 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 30 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 31 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 32 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 33 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 34 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 35 ...................... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 36 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 37 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 38 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 39 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| 40 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 |
| 41 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 |
| 42 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 |
| 43 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 |
| 44 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 |
| 45 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 |
| 46 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 |
| 47 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 |
| 48 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 |
| 49 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 2 |
| 50 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 2 |
| 51 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 2 | 2 |
| 52 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 2 | 2 |
| 53 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 54 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 55 | 0 | 0 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 |
| 56 | 0 | 0 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 3 |
| 57 | 0 | 0 | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 3 |
| 58 | 0 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 3 |
| 59 | 0 | 1 | 1 | 1 | 1 | 2 | 2 | 3 | 3 | 4 |
| 60 | 0 | 1 | 1 | 1 | 2 | 2 | 2 | 3 | 3 | 4 |
| 61 | 0 | 1 | 1 | 1 | 2 | 2 | 3 | 3 | 4 | 4 |
| 62 | 0 | 1 | 1 | 2 | 2 | 2 | 3 | 4 | 4 | 5 |
| 63 | 0 | 1 | 1 | 2 | 2 | 3 | 3 | 4 | 5 | 5 |
| 64 | 0 | 1 | 1 | 2 | 2 | 3 | 4 | 4 | 5 | 6 |
| 65 | 0 | 1 | 2 | 2 | 3 | 3 | 4 | 5 | 6 | 6 |
| 66 | 1 | 1 | 2 | 2 | 3 | 4 | 5 | 5 | 6 | 7 |
| 67 | 1 | 1 | 2 | 3 | 3 | 4 | 5 | 6 | 7 | 8 |
| 68 | 1 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 69 | 1 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 10 |
| 70 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 11 |
| 71 | 1 | 2 | 3 | 4 | 5 | 6 | 8 | 9 | 10 | 12 |
| 72 | 1 | 2 | 3 | 4 | 6 | 7 | 8 | 10 | 11 | 13 |
| 73 | 1 | 2 | 4 | 5 | 6 | 8 | 9 | 11 | 13 | 14 |
| 74 | 1 | 3 | 4 | 5 | 7 | 9 | 10 | 12 | 14 | 16 |
| 75 | 1 | 3 | 4 | 6 | 8 | 9 | 11 | 13 | 15 | 17 |
| 76 | 2 | 3 | 5 | 7 | 9 | 10 | 12 | 15 | 17 | 19 |
| 77 | 2 | 4 | 5 | 7 | 9 | 12 | 14 | 16 | 18 | 21 |
| 78 | 2 | 4 | 6 | 8 | 10 | 13 | 15 | 18 | 20 | 23 |
| 79 | 2 | 4 | 7 | 9 | 11 | 14 | 17 | 19 | 22 | 25 |
| 80 | 2 | 5 | 7 | 10 | 13 | 15 | 18 | 21 | 24 | 27 |
| 81 | 3 | 5 | 8 | 11 | 14 | 17 | 20 | 23 | 26 | 29 |
| 82 | 3 | 6 | 9 | 12 | 15 | 19 | 22 | 25 | 28 | 32 |
| 83 | 3 | 7 | 10 | 13 | 17 | 20 | 24 | 27 | 31 | 34 |
| 84 | 4 | 7 | 11 | 15 | 19 | 22 | 26 | 30 | 33 | 37 |
| 85 | 4 | 8 | 12 | 16 | 20 | 24 | 28 | 32 | 36 | 40 |
| 86 | 4 | 9 | 13 | 18 | 22 | 27 | 31 | 35 | 39 | 42 |
| 87 | 5 | 10 | 15 | 20 | 24 | 29 | 33 | 37 | 41 | 45 |
| 88 | 5 | 11 | 16 | 21 | 26 | 31 | 36 | 40 | 44 | 48 |
| 89 | 6 | 12 | 18 | 23 | 28 | 33 | 38 | 43 | 47 | 50 |
| 90 | 7 | 13 | 19 | 25 | 31 | 36 | 41 | 45 | 49 | 53 |
| 91 | 7 | 14 | 21 | 27 | 33 | 38 | 43 | 48 | 52 | 55 |
| 92 | 8 | 15 | 22 | 29 | 35 | 40 | 45 | 50 | 54 | 58 |
| 93 | 9 | 17 | 24 | 31 | 37 | 43 | 48 | 52 | 56 | 60 |
| 94 | 9 | 18 | 26 | 33 | 39 | 45 | 50 | 54 | 58 | 62 |
| 95 | 10 | 19 | 27 | 35 | 41 | 47 | 52 | 57 | 60 | 64 |
| 96 | 11 | 20 | 29 | 36 | 43 | 49 | 54 | 59 | 62 | 66 |
| 97 | 11 | 21 | 30 | 38 | 45 | 51 | 56 | 61 | 64 | 68 |
| 98 | 12 | 23 | 32 | 40 | 47 | 53 | 58 | 63 | 66 | 69 |
| 99 | 13 | 24 | 34 | 42 | 49 | 55 | 60 | 65 | 68 | 71 |
| 100 | 14 | 26 | 36 | 44 | 52 | 58 | 63 | 67 | 70 | 73 |
| 101 | 14 | 27 | 38 | 47 | 54 | 60 | 65 | 69 | 72 | 75 |
| 102 | 15 | 29 | 40 | 49 | 56 | 62 | 67 | 71 | 74 | 77 |
| 103 | 17 | 31 | 42 | 52 | 59 | 65 | 69 | 73 | 76 | 78 |
| 104 | 18 | 33 | 45 | 55 | 62 | 67 | 72 | 75 | 78 | 80 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 105 | 19 | 36 | 48 | 58 | 65 | 70 | 74 | 77 | 80 | 82 |
| 106 | 21 | 38 | 51 | 61 | 68 | 73 | 77 | 79 | 82 | 84 |
| 107 | 23 | 42 | 55 | 64 | 71 | 75 | 79 | 81 | 84 | 85 |
| 108 | 25 | 45 | 58 | 67 | 73 | 78 | 81 | 83 | 85 | 87 |
| 109 | 28 | 49 | 62 | 71 | 76 | 80 | 83 | 85 | 87 | 88 |
| 110 | 31 | 52 | 66 | 74 | 79 | 82 | 85 | 87 | 88 | 89 |
| 111 | 34 | 57 | 70 | 77 | 82 | 85 | 87 | 88 | 90 | 91 |
| 112 | 37 | 61 | 73 | 80 | 84 | 87 | 88 | 90 | 91 | 92 |
| 113 | 41 | 66 | 77 | 83 | 86 | 88 | 90 | 91 | 92 | 93 |
| 114 | 45 | 70 | 80 | 85 | 88 | 90 | 92 | 93 | 93 | 94 |
| 115 | 50 | 75 | 83 | 88 | 90 | 92 | 93 | 94 | 94 | 95 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 13 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 16 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 17 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 18 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 19 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 20 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 21 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 22 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| 23 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 |
| 24 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 |
| 25 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 |
| 26 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 |
| 27 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 |
| 28 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 |
| 29 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 |
| 30 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 31 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 32 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 33 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 34 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 35 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 36 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 37 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 38 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 |
| 39 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 |
| 40 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 41 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 |
| 42 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 |
| 43 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 3 |
| 44 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 3 | 3 |
| 45 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 |
| 46 | 1 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 |
| 47 | 1 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 4 |
| 48 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 4 | 4 |
| 49 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 4 | 4 | 4 |
| 50 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 4 | 4 | 5 |
| 51 | 2 | 2 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 |
| 52 | 2 | 2 | 3 | 3 | 3 | 4 | 4 | 5 | 5 | 5 |
| 53 | 2 | 3 | 3 | 3 | 4 | 4 | 5 | 5 | 5 | 6 |
| 54 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 6 | 7 |
| 55 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 6 | 7 | 7 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 56 | 3 | 3 | 4 | 4 | 5 | 5 | 6 | 7 | 7 | 8 |
| 57 | 3 | 4 | 4 | 5 | 5 | 6 | 6 | 7 | 8 | 9 |
| 58 | 4 | 4 | 5 | 5 | 6 | 6 | 7 | 8 | 9 | 9 |
| 59 | 4 | 5 | 5 | 6 | 6 | 7 | 8 | 9 | 9 | 10 |
| 60 | 4 | 5 | 6 | 6 | 7 | 8 | 9 | 10 | 10 | 11 |
| 61 | 5 | 6 | 6 | 7 | 8 | 9 | 10 | 10 | 11 | 13 |
| 62 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 63 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 64 | 7 | 8 | 8 | 9 | 10 | 12 | 13 | 14 | 15 | 17 |
| 65 | 7 | 8 | 9 | 10 | 12 | 13 | 14 | 15 | 17 | 18 |
| 66 | 8 | 9 | 10 | 12 | 13 | 14 | 15 | 17 | 18 | 20 |
| 67 | 9 | 10 | 11 | 13 | 14 | 15 | 17 | 18 | 20 | 22 |
| 68 | 10 | 11 | 13 | 14 | 15 | 17 | 19 | 20 | 22 | 24 |
| 69 | 11 | 12 | 14 | 15 | 17 | 19 | 20 | 22 | 24 | 26 |
| 70 | 12 | 14 | 15 | 17 | 19 | 20 | 22 | 24 | 26 | 28 |
| 71 | 13 | 15 | 17 | 18 | 20 | 22 | 24 | 26 | 28 | 30 |
| 72 | 15 | 17 | 18 | 20 | 22 | 24 | 26 | 28 | 30 | 32 |
| 73 | 16 | 18 | 20 | 22 | 24 | 26 | 28 | 31 | 33 | 35 |
| 74 | 18 | 20 | 22 | 24 | 26 | 28 | 31 | 33 | 35 | 37 |
| 75 | 19 | 22 | 24 | 26 | 28 | 31 | 33 | 35 | 38 | 40 |
| 76 | 21 | 24 | 26 | 28 | 31 | 33 | 36 | 38 | 40 | 43 |
| 77 | 23 | 26 | 28 | 31 | 33 | 36 | 38 | 41 | 43 | 45 |
| 78 | 25 | 28 | 31 | 33 | 36 | 38 | 41 | 43 | 46 | 48 |
| 79 | 28 | 30 | 33 | 36 | 38 | 41 | 44 | 46 | 48 | 51 |
| 80 | 30 | 33 | 36 | 38 | 41 | 44 | 46 | 49 | 51 | 53 |
| 81 | 32 | 35 | 38 | 41 | 44 | 47 | 49 | 51 | 54 | 56 |
| 82 | 35 | 38 | 41 | 44 | 47 | 49 | 52 | 54 | 56 | 58 |
| 83 | 38 | 41 | 44 | 47 | 49 | 52 | 54 | 57 | 59 | 61 |
| 84 | 40 | 44 | 47 | 49 | 52 | 55 | 57 | 59 | 61 | 63 |
| 85 | 43 | 46 | 49 | 52 | 55 | 57 | 59 | 62 | 63 | 65 |
| 86 | 46 | 49 | 52 | 55 | 57 | 60 | 62 | 64 | 66 | 67 |
| 87 | 48 | 52 | 55 | 57 | 60 | 62 | 64 | 66 | 68 | 69 |
| 88 | 51 | 54 | 57 | 60 | 62 | 64 | 66 | 68 | 70 | 71 |
| 89 | 54 | 57 | 60 | 62 | 65 | 67 | 68 | 70 | 72 | 73 |
| 90 | 56 | 59 | 62 | 64 | 67 | 69 | 70 | 72 | 74 | 75 |
| 91 | 59 | 62 | 64 | 67 | 69 | 71 | 72 | 74 | 75 | 76 |
| 92 | 61 | 64 | 66 | 69 | 71 | 72 | 74 | 75 | 77 | 78 |
| 93 | 63 | 66 | 68 | 70 | 72 | 74 | 75 | 77 | 78 | 79 |
| 94 | 65 | 68 | 70 | 72 | 74 | 75 | 77 | 78 | 79 | 80 |
| 95 | 67 | 69 | 72 | 74 | 75 | 77 | 78 | 79 | 81 | 82 |
| 96 | 69 | 71 | 73 | 75 | 77 | 78 | 80 | 81 | 82 | 83 |
| 97 | 70 | 73 | 75 | 77 | 78 | 80 | 81 | 82 | 83 | 84 |
| 98 | 72 | 74 | 76 | 78 | 79 | 81 | 82 | 83 | 84 | 85 |
| 99 | 74 | 76 | 78 | 79 | 81 | 82 | 83 | 84 | 85 | 86 |
| 100 | 75 | 78 | 79 | 81 | 82 | 83 | 84 | 85 | 86 | 86 |
| 101 | 77 | 79 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 87 |
| 102 | 79 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 88 |
| 103 | 80 | 82 | 83 | 85 | 86 | 87 | 87 | 88 | 89 | 89 |
| 104 | 82 | 84 | 85 | 86 | 87 | 88 | 88 | 89 | 90 | 90 |
| 105 | 84 | 85 | 86 | 87 | 88 | 89 | 89 | 90 | 90 | 91 |
| 106 | 85 | 86 | 87 | 88 | 89 | 90 | 90 | 91 | 91 | 92 |
| 107 | 87 | 88 | 89 | 89 | 90 | 91 | 91 | 92 | 92 | 93 |
| 108 | 88 | 89 | 90 | 90 | 91 | 92 | 92 | 93 | 93 | 93 |
| 109 | 89 | 90 | 91 | 92 | 92 | 93 | 93 | 93 | 94 | 94 |
| 110 | 90 | 91 | 92 | 92 | 93 | 93 | 94 | 94 | 94 | 95 |
| 111 | 92 | 92 | 93 | 93 | 94 | 94 | 95 | 95 | 95 | 95 |
| 112 | 93 | 93 | 94 | 94 | 95 | 95 | 95 | 96 | 96 | 96 |
| 113 | 94 | 94 | 95 | 95 | 95 | 96 | 96 | 96 | 96 | 97 |
| 114 | 95 | 95 | 95 | 96 | 96 | 96 | 97 | 97 | 97 | 97 |
| 115 | 95 | 96 | 96 | 96 | 97 | 97 | 97 | 97 | 97 | 98 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 |
| 11 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 |
| 12 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 |
| 13 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 |
| 14 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 |
| 15 | 0 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 16 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 17 | 0 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 18 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 19 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 20 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 21 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 22 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 23 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 24 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 25 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 26 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 27 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 |
| 28 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 |
| 29 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 30 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 |
| 31 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 |
| 32 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 |
| 33 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 34 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 |
| 35 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 |
| 36 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 |
| 37 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 |
| 38 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 4 |
| 39 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 4 | 4 |
| 40 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 4 |
| 41 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 |
| 42 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 |
| 43 | 3 | 3 | 3 | 4 | 4 | 4 | 4 | 5 | 5 | 6 |
| 44 | 3 | 3 | 4 | 4 | 4 | 4 | 5 | 5 | 6 | 6 |
| 45 | 3 | 4 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 7 |
| 46 | 4 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 7 | 7 |
| 47 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 7 | 7 | 8 |
| 48 | 4 | 5 | 5 | 5 | 6 | 6 | 7 | 7 | 8 | 9 |
| 49 | 5 | 5 | 5 | 6 | 6 | 7 | 8 | 8 | 9 | 10 |
| 50 | 5 | 5 | 6 | 6 | 7 | 8 | 8 | 9 | 10 | 10 |
| 51 | 5 | 6 | 6 | 7 | 8 | 8 | 9 | 10 | 11 | 11 |
| 52 | 6 | 7 | 7 | 8 | 8 | 9 | 10 | 11 | 11 | 12 |
| 53 | 7 | 7 | 8 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 54 | 7 | 8 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 55 | 8 | 9 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 56 | 9 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 18 |
| 57 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 17 | 18 | 19 |
| 58 | 10 | 11 | 12 | 13 | 14 | 16 | 17 | 18 | 19 | 21 |
| 59 | 11 | 12 | 13 | 15 | 16 | 17 | 18 | 20 | 21 | 22 |
| 60 | 12 | 14 | 15 | 16 | 17 | 19 | 20 | 21 | 23 | 24 |
| 61 | 14 | 15 | 16 | 17 | 19 | 20 | 22 | 23 | 25 | 26 |
| 62 | 15 | 16 | 18 | 19 | 20 | 22 | 23 | 25 | 27 | 28 |
| 63 | 16 | 18 | 19 | 21 | 22 | 24 | 25 | 27 | 29 | 30 |
| 64 | 18 | 19 | 21 | 23 | 24 | 26 | 28 | 29 | 31 | 33 |
| 65 | 20 | 21 | 23 | 25 | 26 | 28 | 30 | 31 | 33 | 35 |
| 66 | 21 | 23 | 25 | 27 | 28 | 30 | 32 | 34 | 35 | 37 |
| 67 | 23 | 25 | 27 | 29 | 31 | 32 | 34 | 36 | 38 | 40 |
| 68 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 38 | 40 | 42 |
| 69 | 28 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 44 |
| 70 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 43 | 45 | 47 |
| 71 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 46 | 47 | 49 |
| 72 | 35 | 37 | 39 | 41 | 43 | 45 | 46 | 48 | 50 | 51 |
| 73 | 37 | 39 | 41 | 43 | 45 | 47 | 49 | 51 | 52 | 54 |
| 74 | 40 | 42 | 44 | 46 | 48 | 50 | 51 | 53 | 54 | 56 |
| 75 | 42 | 44 | 46 | 48 | 50 | 52 | 54 | 55 | 57 | 58 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 76 | 45 | 47 | 49 | 51 | 53 | 54 | 56 | 58 | 59 | 60 |
| 77 | 47 | 50 | 51 | 53 | 55 | 57 | 58 | 60 | 61 | 62 |
| 78 | 50 | 52 | 54 | 56 | 57 | 59 | 61 | 62 | 63 | 64 |
| 79 | 53 | 55 | 56 | 58 | 60 | 61 | 63 | 64 | 65 | 66 |
| 80 | 55 | 57 | 59 | 60 | 62 | 63 | 65 | 66 | 67 | 68 |
| 81 | 58 | 59 | 61 | 63 | 64 | 66 | 67 | 68 | 69 | 70 |
| 82 | 60 | 62 | 63 | 65 | 66 | 68 | 69 | 70 | 71 | 72 |
| 83 | 62 | 64 | 66 | 67 | 68 | 70 | 71 | 72 | 73 | 74 |
| 84 | 65 | 66 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 |
| 85 | 67 | 68 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 |
| 86 | 69 | 70 | 72 | 73 | 74 | 75 | 76 | 77 | 77 | 78 |
| 87 | 71 | 72 | 73 | 75 | 76 | 76 | 77 | 78 | 79 | 80 |
| 88 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 80 | 81 |
| 89 | 74 | 76 | 77 | 78 | 79 | 79 | 80 | 81 | 81 | 82 |
| 90 | 76 | 77 | 78 | 79 | 80 | 81 | 81 | 82 | 83 | 83 |
| 91 | 78 | 79 | 79 | 80 | 81 | 82 | 83 | 83 | 84 | 84 |
| 92 | 79 | 80 | 81 | 82 | 82 | 83 | 84 | 84 | 85 | 85 |
| 93 | 80 | 81 | 82 | 83 | 83 | 84 | 85 | 85 | 86 | 86 |
| 94 | 81 | 82 | 83 | 84 | 84 | 85 | 85 | 86 | 86 | 87 |
| 95 | 82 | 83 | 84 | 85 | 85 | 86 | 86 | 87 | 87 | 88 |
| 96 | 83 | 84 | 85 | 86 | 86 | 87 | 87 | 88 | 88 | 88 |
| 97 | 84 | 85 | 86 | 86 | 87 | 87 | 88 | 88 | 89 | 89 |
| 98 | 85 | 86 | 87 | 87 | 88 | 88 | 89 | 89 | 89 | 90 |
| 99 | 86 | 87 | 87 | 88 | 88 | 89 | 89 | 90 | 90 | 90 |
| 100 | 87 | 88 | 88 | 89 | 89 | 90 | 90 | 90 | 91 | 91 |
| 101 | 88 | 89 | 89 | 90 | 90 | 90 | 91 | 91 | 91 | 92 |
| 102 | 89 | 89 | 90 | 90 | 91 | 91 | 91 | 92 | 92 | 92 |
| 103 | 90 | 90 | 91 | 91 | 91 | 92 | 92 | 92 | 93 | 93 |
| 104 | 91 | 91 | 91 | 92 | 92 | 92 | 93 | 93 | 93 | 93 |
| 105 | 91 | 92 | 92 | 92 | 93 | 93 | 93 | 94 | 94 | 94 |
| 106 | 92 | 93 | 93 | 93 | 93 | 94 | 94 | 94 | 94 | 95 |
| 107 | 93 | 93 | 94 | 94 | 94 | 94 | 95 | 95 | 95 | 95 |
| 108 | 94 | 94 | 94 | 94 | 95 | 95 | 95 | 95 | 95 | 96 |
| 109 | 94 | 95 | 95 | 95 | 95 | 95 | 96 | 96 | 96 | 96 |
| 110 | 95 | 95 | 95 | 96 | 96 | 96 | 96 | 96 | 96 | 96 |
| 111 | 96 | 96 | 96 | 96 | 96 | 96 | 97 | 97 | 97 | 97 |
| 112 | 96 | 96 | 96 | 97 | 97 | 97 | 97 | 97 | 97 | 97 |
| 113 | 97 | 97 | 97 | 97 | 97 | 97 | 97 | 98 | 98 | 98 |
| 114 | 97 | 97 | 97 | 98 | 98 | 98 | 98 | 98 | 98 | 98 |
| 115 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 98 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 |
| 5 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 6 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 7 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 8 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 9 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 10 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 11 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 12 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 13 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 14 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 15 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 16 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 17 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 18 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 |
| 19 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 |
| 20 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 |
| 21 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 |
| 22 | 1 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 |
| 23 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 24 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 25 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 |
| 26 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 |
| 27 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 |
| 28 | 2 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 |
| 29 | 2 | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 4 |
| 30 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 |
| 31 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 4 |
| 32 | 2 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 |
| 33 | 3 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 |
| 34 | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 5 |
| 35 | 3 | 3 | 3 | 4 | 4 | 4 | 5 | 5 | 5 | 6 |
| 36 | 3 | 4 | 4 | 4 | 4 | 5 | 5 | 5 | 6 | 6 |
| 37 | 4 | 4 | 4 | 4 | 5 | 5 | 6 | 6 | 6 | 7 |
| 38 | 4 | 4 | 5 | 5 | 5 | 6 | 6 | 7 | 7 | 8 |
| 39 | 4 | 5 | 5 | 5 | 6 | 6 | 7 | 7 | 8 | 8 |
| 40 | 5 | 5 | 5 | 6 | 6 | 7 | 7 | 8 | 8 | 9 |
| 41 | 5 | 5 | 6 | 6 | 7 | 7 | 8 | 9 | 9 | 10 |
| 42 | 6 | 6 | 6 | 7 | 7 | 8 | 9 | 9 | 10 | 11 |
| 43 | 6 | 7 | 7 | 8 | 8 | 9 | 9 | 10 | 11 | 12 |
| 44 | 7 | 7 | 8 | 8 | 9 | 10 | 10 | 11 | 12 | 13 |
| 45 | 7 | 8 | 8 | 9 | 10 | 10 | 11 | 12 | 13 | 14 |
| 46 | 8 | 9 | 9 | 10 | 11 | 11 | 12 | 13 | 14 | 15 |
| 47 | 9 | 9 | 10 | 11 | 12 | 12 | 13 | 14 | 15 | 16 |
| 48 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 49 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 50 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 20 | 21 |
| 51 | 12 | 13 | 14 | 15 | 16 | 17 | 19 | 20 | 21 | 22 |
| 52 | 13 | 14 | 15 | 17 | 18 | 19 | 20 | 21 | 23 | 24 |
| 53 | 15 | 16 | 17 | 18 | 19 | 20 | 22 | 23 | 24 | 26 |
| 54 | 16 | 17 | 18 | 19 | 21 | 22 | 23 | 25 | 26 | 28 |
| 55 | 17 | 18 | 20 | 21 | 22 | 24 | 25 | 27 | 28 | 30 |
| 56 | 19 | 20 | 21 | 23 | 24 | 26 | 27 | 29 | 30 | 32 |
| 57 | 20 | 22 | 23 | 25 | 26 | 28 | 29 | 31 | 32 | 34 |
| 58 | 22 | 24 | 25 | 27 | 28 | 30 | 31 | 33 | 34 | 36 |
| 59 | 24 | 25 | 27 | 28 | 30 | 32 | 33 | 35 | 36 | 38 |
| 60 | 26 | 27 | 29 | 31 | 32 | 34 | 35 | 37 | 38 | 40 |
| 61 | 28 | 29 | 31 | 33 | 34 | 36 | 37 | 39 | 40 | 42 |
| 62 | 30 | 32 | 33 | 35 | 36 | 38 | 40 | 41 | 42 | 44 |
| 63 | 32 | 34 | 35 | 37 | 39 | 40 | 42 | 43 | 45 | 46 |
| 64 | 34 | 36 | 38 | 39 | 41 | 42 | 44 | 45 | 47 | 48 |
| 65 | 37 | 38 | 40 | 42 | 43 | 45 | 46 | 47 | 49 | 50 |
| 66 | 39 | 41 | 42 | 44 | 45 | 47 | 48 | 50 | 51 | 52 |
| 67 | 41 | 43 | 45 | 46 | 48 | 49 | 50 | 52 | 53 | 54 |
| 68 | 44 | 45 | 47 | 48 | 50 | 51 | 52 | 54 | 55 | 56 |
| 69 | 46 | 48 | 49 | 51 | 52 | 53 | 54 | 56 | 57 | 58 |
| 70 | 48 | 50 | 51 | 53 | 54 | 55 | 57 | 58 | 59 | 60 |
| 71 | 51 | 52 | 54 | 55 | 56 | 57 | 59 | 60 | 61 | 62 |
| 72 | 53 | 54 | 56 | 57 | 58 | 59 | 60 | 62 | 62 | 63 |
| 73 | 55 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 |
| 74 | 57 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 |
| 75 | 59 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 |
| 76 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 69 | 70 |
| 77 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 70 | 71 | 72 |
| 78 | 66 | 67 | 68 | 69 | 70 | 70 | 71 | 72 | 73 | 73 |
| 79 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 73 | 74 | 75 |
| 80 | 69 | 70 | 71 | 72 | 73 | 74 | 74 | 75 | 76 | 76 |
| 81 | 71 | 72 | 73 | 74 | 74 | 75 | 76 | 76 | 77 | 78 |
| 82 | 73 | 74 | 74 | 75 | 76 | 77 | 77 | 78 | 78 | 79 |
| 83 | 74 | 75 | 76 | 77 | 77 | 78 | 79 | 79 | 80 | 80 |
| 84 | 76 | 77 | 77 | 78 | 79 | 79 | 80 | 80 | 81 | 81 |
| 85 | 78 | 78 | 79 | 79 | 80 | 81 | 81 | 82 | 82 | 83 |
| 86 | 79 | 80 | 80 | 81 | 81 | 82 | 82 | 83 | 83 | 84 |
| 87 | 80 | 81 | 81 | 82 | 83 | 83 | 83 | 84 | 84 | 85 |
| 88 | 82 | 82 | 83 | 83 | 84 | 84 | 85 | 85 | 85 | 86 |
| 89 | 83 | 83 | 84 | 84 | 85 | 85 | 85 | 86 | 86 | 87 |
| 90 | 84 | 84 | 85 | 85 | 86 | 86 | 86 | 87 | 87 | 87 |
| 91 | 85 | 85 | 86 | 86 | 87 | 87 | 87 | 88 | 88 | 88 |
| 92 | 86 | 86 | 87 | 87 | 87 | 88 | 88 | 88 | 89 | 89 |
| 93 | 87 | 87 | 87 | 88 | 88 | 88 | 89 | 89 | 89 | 90 |
| 94 | 87 | 88 | 88 | 88 | 89 | 89 | 89 | 90 | 90 | 90 |
| 95 | 88 | 88 | 89 | 89 | 89 | 90 | 90 | 90 | 91 | 91 |

TABLE VII—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 |
| 96 | 89 | 89 | 89 | 90 | 90 | 90 | 91 | 91 | 91 | 91 |
| 97 | 89 | 90 | 90 | 90 | 91 | 91 | 91 | 91 | 92 | 92 |
| 98 | 90 | 90 | 91 | 91 | 91 | 91 | 92 | 92 | 92 | 92 |
| 99 | 91 | 91 | 91 | 92 | 92 | 92 | 92 | 92 | 93 | 93 |
| 100 | 91 | 92 | 92 | 92 | 92 | 92 | 93 | 93 | 93 | 93 |
| 101 | 92 | 92 | 92 | 93 | 93 | 93 | 93 | 93 | 94 | 94 |
| 102 | 92 | 93 | 93 | 93 | 93 | 94 | 94 | 94 | 94 | 94 |
| 103 | 93 | 93 | 93 | 94 | 94 | 94 | 94 | 94 | 94 | 95 |
| 104 | 94 | 94 | 94 | 94 | 94 | 95 | 95 | 95 | 95 | 95 |
| 105 | 94 | 94 | 95 | 95 | 95 | 95 | 95 | 95 | 95 | 95 |
| 106 | 95 | 95 | 95 | 95 | 95 | 95 | 96 | 96 | 96 | 96 |
| 107 | 95 | 95 | 96 | 96 | 96 | 96 | 96 | 96 | 96 | 96 |
| 108 | 96 | 96 | 96 | 96 | 96 | 96 | 96 | 96 | 97 | 97 |
| 109 | 96 | 96 | 96 | 97 | 97 | 97 | 97 | 97 | 97 | 97 |
| 110 | 97 | 97 | 97 | 97 | 97 | 97 | 97 | 97 | 97 | 97 |
| 111 | 97 | 97 | 97 | 97 | 97 | 97 | 98 | 98 | 98 | 98 |
| 112 | 97 | 97 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 98 |
| 113 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 98 |
| 114 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 98 | 99 |
| 115 | 98 | 98 | 98 | 99 | 99 | 99 | 99 | 99 | 99 | 99 |

TABLE VIII—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 5 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 6 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 7 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 8 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 9 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 10 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 11 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 12 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 13 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 14 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 15 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 16 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 17 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 18 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 19 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 20 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 21 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 22 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 23 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 24 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 25 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 26 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 27 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 28 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 29 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 30 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 31 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 32 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 33 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 34 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 35 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 36 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 10.0 |
| 37 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 9.9 |
| 38 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 9.9 |
| 39 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 9.0 | 9.9 |
| 40 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 41 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 42 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 8.0 | 8.9 | 9.9 |
| 43 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 7.9 | 8.9 | 9.9 |

TABLE VIII—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 44 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 7.9 | 8.9 | 9.9 |
| 45 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 7.0 | 7.9 | 8.9 | 9.9 |
| 46 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 6.9 | 7.9 | 8.9 | 9.9 |
| 47 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 6.9 | 7.9 | 8.9 | 9.9 |
| 48 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 6.9 | 7.9 | 8.9 | 9.9 |
| 49 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 6.0 | 6.9 | 7.9 | 8.9 | 9.8 |
| 50 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 5.9 | 6.9 | 7.9 | 8.9 | 9.8 |
| 51 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 5.9 | 6.9 | 7.9 | 8.9 | 9.8 |
| 52 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 5.9 | 6.9 | 7.9 | 8.8 | 9.8 |
| 53 | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 | 5.9 | 6.9 | 7.9 | 8.8 | 9.8 |
| 54 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.9 | 8.8 | 9.8 |
| 55 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.8 | 8.8 | 9.7 |
| 56 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.8 | 8.8 | 9.7 |
| 57 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.8 | 8.8 | 9.7 |
| 58 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.9 | 7.8 | 8.7 | 9.7 |
| 59 | 1.0 | 2.0 | 3.0 | 4.0 | 4.9 | 5.9 | 6.8 | 7.8 | 8.7 | 9.6 |
| 60 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.9 | 6.8 | 7.8 | 8.7 | 9.6 |
| 61 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.9 | 6.8 | 7.7 | 8.7 | 9.6 |
| 62 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.8 | 6.8 | 7.7 | 8.6 | 9.5 |
| 63 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.8 | 6.8 | 7.7 | 8.6 | 9.5 |
| 64 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.8 | 6.7 | 7.6 | 8.5 | 9.4 |
| 65 | 1.0 | 2.0 | 3.0 | 3.9 | 4.9 | 5.8 | 6.7 | 7.6 | 8.5 | 9.3 |
| 66 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.8 | 6.7 | 7.6 | 8.4 | 9.3 |
| 67 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.7 | 6.6 | 7.5 | 8.4 | 9.2 |
| 68 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.7 | 6.6 | 7.5 | 8.3 | 9.1 |
| 69 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.7 | 6.6 | 7.4 | 8.2 | 9.0 |
| 70 | 1.0 | 2.0 | 2.9 | 3.9 | 4.8 | 5.6 | 6.5 | 7.3 | 8.1 | 8.9 |
| 71 | 1.0 | 2.0 | 2.9 | 3.8 | 4.7 | 5.6 | 6.5 | 7.3 | 8.1 | 8.8 |
| 72 | 1.0 | 2.0 | 2.9 | 3.8 | 4.7 | 5.6 | 6.4 | 7.2 | 8.0 | 8.7 |
| 73 | 1.0 | 2.0 | 2.9 | 3.8 | 4.7 | 5.5 | 6.3 | 7.1 | 7.9 | 8.6 |
| 74 | 1.0 | 1.9 | 2.9 | 3.8 | 4.6 | 5.5 | 6.3 | 7.0 | 7.7 | 8.4 |
| 75 | 1.0 | 1.9 | 2.9 | 3.8 | 4.6 | 5.4 | 6.2 | 6.9 | 7.6 | 8.3 |
| 76 | 1.0 | 1.9 | 2.8 | 3.7 | 4.6 | 5.4 | 6.1 | 6.8 | 7.5 | 8.1 |
| 77 | 1.0 | 1.9 | 2.8 | 3.7 | 4.5 | 5.3 | 6.0 | 6.7 | 7.3 | 7.9 |
| 78 | 1.0 | 1.9 | 2.8 | 3.7 | 4.5 | 5.2 | 5.9 | 6.6 | 7.2 | 7.7 |
| 79 | 1.0 | 1.9 | 2.8 | 3.6 | 4.4 | 5.1 | 5.8 | 6.4 | 7.0 | 7.5 |
| 80 | 1.0 | 1.9 | 2.8 | 3.6 | 4.4 | 5.1 | 5.7 | 6.3 | 6.8 | 7.3 |
| 81 | 1.0 | 1.9 | 2.8 | 3.6 | 4.3 | 5.0 | 5.6 | 6.1 | 6.6 | 7.0 |
| 82 | 1.0 | 1.9 | 2.7 | 3.5 | 4.2 | 4.9 | 5.4 | 6.0 | 6.4 | 6.8 |
| 83 | 1.0 | 1.9 | 2.7 | 3.5 | 4.1 | 4.8 | 5.3 | 5.8 | 6.2 | 6.5 |
| 84 | 1.0 | 1.8 | 2.7 | 3.4 | 4.1 | 4.6 | 5.2 | 5.6 | 6.0 | 6.3 |
| 85 | 1.0 | 1.8 | 2.6 | 3.3 | 4.0 | 4.5 | 5.0 | 5.4 | 5.7 | 6.0 |
| 86 | 1.0 | 1.8 | 2.6 | 3.3 | 3.9 | 4.4 | 4.8 | 5.2 | 5.5 | 5.7 |
| 87 | .9 | 1.8 | 2.5 | 3.2 | 3.8 | 4.3 | 4.7 | 5.0 | 5.3 | 5.5 |
| 88 | .9 | 1.8 | 2.5 | 3.1 | 3.7 | 4.1 | 4.5 | 4.8 | 5.0 | 5.2 |
| 89 | .9 | 1.8 | 2.5 | 3.1 | 3.6 | 4.0 | 4.3 | 4.6 | 4.8 | 4.9 |
| 90 | .9 | 1.7 | 2.4 | 3.0 | 3.4 | 3.8 | 4.1 | 4.4 | 4.5 | 4.7 |
| 91 | .9 | 1.7 | 2.4 | 2.9 | 3.3 | 3.7 | 4.0 | 4.2 | 4.3 | 4.4 |
| 92 | .9 | 1.7 | 2.3 | 2.8 | 3.2 | 3.5 | 3.8 | 4.0 | 4.1 | 4.2 |
| 93 | .9 | 1.7 | 2.3 | 2.7 | 3.1 | 3.4 | 3.6 | 3.8 | 3.9 | 4.0 |
| 94 | .9 | 1.6 | 2.2 | 2.7 | 3.0 | 3.3 | 3.5 | 3.6 | 3.7 | 3.8 |
| 95 | .9 | 1.6 | 2.2 | 2.6 | 2.9 | 3.1 | 3.3 | 3.4 | 3.5 | 3.6 |
| 96 | .9 | 1.6 | 2.1 | 2.5 | 2.8 | 3.0 | 3.2 | 3.3 | 3.3 | 3.4 |
| 97 | .9 | 1.6 | 2.1 | 2.4 | 2.7 | 2.9 | 3.0 | 3.1 | 3.2 | 3.2 |
| 98 | .9 | 1.5 | 2.0 | 2.4 | 2.6 | 2.8 | 2.9 | 3.0 | 3.0 | 3.0 |
| 99 | .9 | 1.5 | 2.0 | 2.3 | 2.5 | 2.6 | 2.7 | 2.8 | 2.8 | 2.8 |
| 100 | .9 | 1.5 | 1.9 | 2.2 | 2.4 | 2.5 | 2.6 | 2.6 | 2.6 | 2.7 |
| 101 | .8 | 1.4 | 1.8 | 2.1 | 2.3 | 2.4 | 2.4 | 2.5 | 2.5 | 2.5 |
| 102 | .8 | 1.4 | 1.8 | 2.0 | 2.1 | 2.2 | 2.3 | 2.3 | 2.3 | 2.3 |
| 103 | .8 | 1.4 | 1.7 | 1.9 | 2.0 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | .8 | 1.3 | 1.6 | 1.8 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | .8 | 1.3 | 1.5 | 1.7 | 1.7 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 |
| 106 | .8 | 1.2 | 1.4 | 1.5 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | .7 | 1.1 | 1.3 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | .7 | 1.1 | 1.2 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | .7 | 1.0 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | .7 | .9 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .6 | .8 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |

TABLE VIII—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 112 | .6 | .7 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .6 | .6 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .5 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIII—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 5 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 17.0 | 18.0 | 19.0 | 19.9 |
| 6 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 17.0 | 18.0 | 19.0 | 19.9 |
| 7 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 17.0 | 18.0 | 19.0 | 19.9 |
| 8 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 17.0 | 18.0 | 18.9 | 19.9 |
| 9 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 17.0 | 18.0 | 18.9 | 19.9 |
| 10 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 17.0 | 18.0 | 18.9 | 19.9 |
| 11 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 17.0 | 17.9 | 18.9 | 19.9 |
| 12 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 17.0 | 17.9 | 18.9 | 19.9 |
| 13 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 17.0 | 17.9 | 18.9 | 19.9 |
| 14 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 16.9 | 17.9 | 18.9 | 19.9 |
| 15 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 16.9 | 17.9 | 18.9 | 19.9 |
| 16 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 16.0 | 16.9 | 17.9 | 18.9 | 19.9 |
| 17 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 18 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 19 | 11.0 | 12.0 | 13.0 | 14.0 | 15.0 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 20 | 11.0 | 12.0 | 13.0 | 14.0 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 21 | 11.0 | 12.0 | 13.0 | 14.0 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 22 | 11.0 | 12.0 | 13.0 | 14.0 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 23 | 11.0 | 12.0 | 13.0 | 13.9 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 24 | 11.0 | 12.0 | 13.0 | 13.9 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 25 | 11.0 | 12.0 | 13.0 | 13.9 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 26 | 11.0 | 12.0 | 12.9 | 13.9 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 27 | 11.0 | 12.0 | 12.9 | 13.9 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.9 |
| 28 | 11.0 | 12.0 | 12.9 | 13.9 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.8 |
| 29 | 11.0 | 12.0 | 12.9 | 13.9 | 14.9 | 15.9 | 16.9 | 17.9 | 18.9 | 19.8 |
| 30 | 11.0 | 11.9 | 12.9 | 13.9 | 14.9 | 15.9 | 16.9 | 17.9 | 18.8 | 19.8 |
| 31 | 11.0 | 11.9 | 12.9 | 13.9 | 14.9 | 15.9 | 16.9 | 17.9 | 18.8 | 19.8 |
| 32 | 11.0 | 11.9 | 12.9 | 13.9 | 14.9 | 15.9 | 16.9 | 17.8 | 18.8 | 19.8 |
| 33 | 11.0 | 11.9 | 12.9 | 13.9 | 14.9 | 15.9 | 16.9 | 17.8 | 18.8 | 19.8 |
| 34 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.9 | 16.8 | 17.8 | 18.8 | 19.8 |
| 35 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.9 | 16.8 | 17.8 | 18.8 | 19.7 |
| 36 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.8 | 19.7 |
| 37 | 10.9 | 11.9 | 12.9 | 13.9 | 14.9 | 15.8 | 16.8 | 17.8 | 18.7 | 19.7 |
| 38 | 10.9 | 11.9 | 12.9 | 13.9 | 14.8 | 15.8 | 16.8 | 17.8 | 18.7 | 19.7 |
| 39 | 10.9 | 11.9 | 12.9 | 13.9 | 14.8 | 15.8 | 16.8 | 17.7 | 18.7 | 19.6 |
| 40 | 10.9 | 11.9 | 12.9 | 13.8 | 14.8 | 15.8 | 16.7 | 17.7 | 18.7 | 19.6 |
| 41 | 10.9 | 11.9 | 12.9 | 13.8 | 14.8 | 15.8 | 16.7 | 17.7 | 18.6 | 19.6 |
| 42 | 10.9 | 11.9 | 12.8 | 13.8 | 14.8 | 15.7 | 16.7 | 17.6 | 18.6 | 19.5 |
| 43 | 10.9 | 11.9 | 12.8 | 13.8 | 14.8 | 15.7 | 16.7 | 17.6 | 18.6 | 19.5 |
| 44 | 10.9 | 11.8 | 12.8 | 13.8 | 14.7 | 15.7 | 16.6 | 17.6 | 18.5 | 19.4 |
| 45 | 10.9 | 11.8 | 12.8 | 13.8 | 14.7 | 15.7 | 16.6 | 17.5 | 18.5 | 19.4 |
| 46 | 10.9 | 11.8 | 12.8 | 13.7 | 14.7 | 15.6 | 16.6 | 17.5 | 18.4 | 19.3 |
| 47 | 10.8 | 11.8 | 12.8 | 13.7 | 14.7 | 15.6 | 16.5 | 17.5 | 18.4 | 19.3 |
| 48 | 10.8 | 11.8 | 12.7 | 13.7 | 14.6 | 15.6 | 16.5 | 17.4 | 18.3 | 19.2 |
| 49 | 10.8 | 11.8 | 12.7 | 13.7 | 14.6 | 15.5 | 16.4 | 17.4 | 18.3 | 19.2 |
| 50 | 10.8 | 11.7 | 12.7 | 13.6 | 14.6 | 15.5 | 16.4 | 17.3 | 18.2 | 19.1 |
| 51 | 10.8 | 11.7 | 12.7 | 13.6 | 14.5 | 15.4 | 16.3 | 17.2 | 18.1 | 19.0 |
| 52 | 10.8 | 11.7 | 12.6 | 13.6 | 14.5 | 15.4 | 16.3 | 17.2 | 18.0 | 18.9 |
| 53 | 10.7 | 11.7 | 12.6 | 13.5 | 14.4 | 15.3 | 16.2 | 17.1 | 18.0 | 18.8 |
| 54 | 10.7 | 11.6 | 12.6 | 13.5 | 14.4 | 15.3 | 16.2 | 17.0 | 17.9 | 18.7 |
| 55 | 10.7 | 11.6 | 12.5 | 13.4 | 14.3 | 15.2 | 16.1 | 16.9 | 17.8 | 18.6 |
| 56 | 10.7 | 11.6 | 12.5 | 13.4 | 14.3 | 15.1 | 16.0 | 16.8 | 17.6 | 18.4 |
| 57 | 10.6 | 11.5 | 12.4 | 13.3 | 14.2 | 15.1 | 15.9 | 16.7 | 17.5 | 18.3 |
| 58 | 10.6 | 11.5 | 12.4 | 13.3 | 14.1 | 15.0 | 15.8 | 16.6 | 17.4 | 18.1 |

TABLE VIII—TEMPORARY LIFE ANNUITIES;[1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 59 | 10.6 | 11.4 | 12.3 | 13.2 | 14.0 | 14.9 | 15.7 | 16.4 | 17.2 | 17.9 |
| 60 | 10.5 | 11.4 | 12.3 | 13.1 | 13.9 | 14.7 | 15.5 | 16.3 | 17.0 | 17.7 |
| 61 | 10.5 | 11.3 | 12.2 | 13.0 | 13.8 | 14.6 | 15.4 | 16.1 | 16.8 | 17.5 |
| 62 | 10.4 | 11.3 | 12.1 | 12.9 | 13.7 | 14.5 | 15.2 | 15.9 | 16.6 | 17.2 |
| 63 | 10.3 | 11.2 | 12.0 | 12.8 | 13.6 | 14.3 | 15.0 | 15.7 | 16.3 | 17.0 |
| 64 | 10.3 | 11.1 | 11.9 | 12.7 | 13.4 | 14.1 | 14.8 | 15.5 | 16.1 | 16.7 |
| 65 | 10.2 | 11.0 | 11.8 | 12.5 | 13.2 | 13.9 | 14.6 | 15.2 | 15.8 | 16.3 |
| 66 | 10.1 | 10.9 | 11.6 | 12.4 | 13.1 | 13.7 | 14.4 | 14.9 | 15.5 | 16.0 |
| 67 | 10.0 | 10.8 | 11.5 | 12.2 | 12.9 | 13.5 | 14.1 | 14.7 | 15.2 | 15.6 |
| 68 | 9.9 | 10.6 | 11.4 | 12.0 | 12.7 | 13.3 | 13.8 | 14.3 | 14.8 | 15.3 |
| 69 | 9.8 | 10.5 | 11.2 | 11.8 | 12.4 | 13.0 | 13.5 | 14.0 | 14.4 | 14.8 |
| 70 | 9.6 | 10.3 | 11.0 | 11.6 | 12.2 | 12.7 | 13.2 | 13.7 | 14.0 | 14.4 |
| 71 | 9.5 | 10.2 | 10.8 | 11.4 | 11.9 | 12.4 | 12.9 | 13.3 | 13.6 | 13.9 |
| 72 | 9.4 | 10.0 | 10.6 | 11.2 | 11.7 | 12.1 | 12.5 | 12.9 | 13.2 | 13.5 |
| 73 | 9.2 | 9.8 | 10.4 | 10.9 | 11.4 | 11.8 | 12.1 | 12.5 | 12.7 | 13.0 |
| 74 | 9.0 | 9.6 | 10.1 | 10.6 | 11.0 | 11.4 | 11.7 | 12.0 | 12.3 | 12.5 |
| 75 | 8.8 | 9.4 | 9.9 | 10.3 | 10.7 | 11.0 | 11.3 | 11.6 | 11.8 | 12.0 |
| 76 | 8.6 | 9.1 | 9.6 | 10.0 | 10.3 | 10.6 | 10.9 | 11.1 | 11.3 | 11.4 |
| 77 | 8.4 | 8.9 | 9.3 | 9.7 | 10.0 | 10.2 | 10.5 | 10.6 | 10.8 | 10.9 |
| 78 | 8.2 | 8.6 | 9.0 | 9.3 | 9.6 | 9.8 | 10.0 | 10.2 | 10.3 | 10.4 |
| 79 | 7.9 | 8.3 | 8.7 | 9.0 | 9.2 | 9.4 | 9.5 | 9.7 | 9.8 | 9.8 |
| 80 | 7.7 | 8.0 | 8.3 | 8.6 | 8.8 | 9.0 | 9.1 | 9.2 | 9.3 | 9.3 |
| 81 | 7.4 | 7.7 | 8.0 | 8.2 | 8.4 | 8.5 | 8.6 | 8.7 | 8.8 | 8.8 |
| 82 | 7.1 | 7.4 | 7.6 | 7.8 | 8.0 | 8.1 | 8.2 | 8.2 | 8.3 | 8.3 |
| 83 | 6.8 | 7.1 | 7.3 | 7.4 | 7.5 | 7.6 | 7.7 | 7.8 | 7.8 | 7.8 |
| 84 | 6.5 | 6.7 | 6.9 | 7.0 | 7.1 | 7.2 | 7.3 | 7.3 | 7.3 | 7.4 |
| 85 | 6.2 | 6.4 | 6.6 | 6.7 | 6.7 | 6.8 | 6.8 | 6.9 | 6.9 | 6.9 |
| 86 | 5.9 | 6.1 | 6.2 | 6.3 | 6.4 | 6.4 | 6.4 | 6.5 | 6.5 | 6.5 |
| 87 | 5.6 | 5.8 | 5.9 | 5.9 | 6.0 | 6.0 | 6.0 | 6.1 | 6.1 | 6.1 |
| 88 | 5.3 | 5.4 | 5.5 | 5.6 | 5.6 | 5.6 | 5.7 | 5.7 | 5.7 | 5.7 |
| 89 | 5.1 | 5.1 | 5.2 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 |
| 90 | 4.8 | 4.9 | 4.9 | 4.9 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| 91 | 4.5 | 4.6 | 4.6 | 4.6 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 |
| 92 | 4.3 | 4.3 | 4.3 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 |
| 93 | 4.0 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 |
| 94 | 3.8 | 3.8 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 |
| 95 | 3.6 | 3.6 | 3.6 | 3.6 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 |
| 96 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 |
| 97 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 |
| 98 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 99 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| 100 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 |
| 101 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 102 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 |
| 106 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIII—TEMPORARY LIFE ANNUITIES;[1] ONE LIFE—EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 5 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.9 | 27.9 | 28.9 | 29.9 |

TABLE VIII—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 6 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.9 | 27.9 | 28.9 | 29.9 |
| 7 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.9 | 27.9 | 28.9 | 29.9 |
| 8 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.9 | 27.9 | 28.9 | 29.8 |
| 9 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.9 | 27.9 | 28.9 | 29.8 |
| 10 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.9 | 27.9 | 28.8 | 29.8 |
| 11 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.9 | 27.9 | 28.8 | 29.8 |
| 12 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.9 | 27.8 | 28.8 | 29.8 |
| 13 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.9 | 27.8 | 28.8 | 29.8 |
| 14 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.8 | 27.8 | 28.8 | 29.8 |
| 15 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.9 | 26.8 | 27.8 | 28.8 | 29.8 |
| 16 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.8 | 26.8 | 27.8 | 28.8 | 29.8 |
| 17 | 20.9 | 21.9 | 22.9 | 23.9 | 24.9 | 25.8 | 26.8 | 27.8 | 28.8 | 29.8 |
| 18 | 20.9 | 21.9 | 22.9 | 23.9 | 24.8 | 25.8 | 26.8 | 27.8 | 28.8 | 29.7 |
| 19 | 20.9 | 21.9 | 22.9 | 23.9 | 24.8 | 25.8 | 26.8 | 27.8 | 28.8 | 29.7 |
| 20 | 20.9 | 21.9 | 22.9 | 23.8 | 24.8 | 25.8 | 26.8 | 27.8 | 28.7 | 29.7 |
| 21 | 20.9 | 21.9 | 22.9 | 23.8 | 24.8 | 25.8 | 26.8 | 27.8 | 28.7 | 29.7 |
| 22 | 20.9 | 21.9 | 22.8 | 23.8 | 24.8 | 25.8 | 26.8 | 27.7 | 28.7 | 29.7 |
| 23 | 20.9 | 21.9 | 22.8 | 23.8 | 24.8 | 25.8 | 26.7 | 27.7 | 28.7 | 29.7 |
| 24 | 20.9 | 21.8 | 22.8 | 23.8 | 24.8 | 25.8 | 26.7 | 27.7 | 28.7 | 29.6 |
| 25 | 20.9 | 21.8 | 22.8 | 23.8 | 24.8 | 25.7 | 26.7 | 27.7 | 28.6 | 29.6 |
| 26 | 20.8 | 21.8 | 22.8 | 23.8 | 24.8 | 25.7 | 26.7 | 27.7 | 28.6 | 29.6 |
| 27 | 20.8 | 21.8 | 22.8 | 23.8 | 24.7 | 25.7 | 26.7 | 27.6 | 28.6 | 29.5 |
| 28 | 20.8 | 21.8 | 22.8 | 23.7 | 24.7 | 25.7 | 26.6 | 27.6 | 28.6 | 29.5 |
| 29 | 20.8 | 21.8 | 22.8 | 23.7 | 24.7 | 25.7 | 26.6 | 27.6 | 28.5 | 29.5 |
| 30 | 20.8 | 21.8 | 22.7 | 23.7 | 24.7 | 25.6 | 26.6 | 27.5 | 28.5 | 29.4 |
| 31 | 20.8 | 21.8 | 22.7 | 23.7 | 24.6 | 25.6 | 26.6 | 27.5 | 28.4 | 29.4 |
| 32 | 20.8 | 21.7 | 22.7 | 23.7 | 24.6 | 25.6 | 26.5 | 27.5 | 28.4 | 29.3 |
| 33 | 20.8 | 21.7 | 22.7 | 23.6 | 24.6 | 25.5 | 26.5 | 27.4 | 28.4 | 29.3 |
| 34 | 20.7 | 21.7 | 22.7 | 23.6 | 24.6 | 25.5 | 26.4 | 27.4 | 28.3 | 29.2 |
| 35 | 20.7 | 21.7 | 22.6 | 23.6 | 24.5 | 25.5 | 26.4 | 27.3 | 28.2 | 29.2 |
| 36 | 20.7 | 21.6 | 22.6 | 23.5 | 24.5 | 25.4 | 26.3 | 27.3 | 28.2 | 29.1 |
| 37 | 20.7 | 21.6 | 22.6 | 23.5 | 24.4 | 25.4 | 26.3 | 27.2 | 28.1 | 29.0 |
| 38 | 20.6 | 21.6 | 22.5 | 23.4 | 24.4 | 25.3 | 26.2 | 27.1 | 28.0 | 28.9 |
| 39 | 20.6 | 21.5 | 22.5 | 23.4 | 24.3 | 25.2 | 26.1 | 27.0 | 27.9 | 28.8 |
| 40 | 20.6 | 21.5 | 22.4 | 23.3 | 24.3 | 25.2 | 26.1 | 27.0 | 27.8 | 28.7 |
| 41 | 20.5 | 21.4 | 22.4 | 23.3 | 24.2 | 25.1 | 26.0 | 26.9 | 27.7 | 28.6 |
| 42 | 20.5 | 21.4 | 22.3 | 23.2 | 24.1 | 25.0 | 25.9 | 26.8 | 27.6 | 28.5 |
| 43 | 20.4 | 21.3 | 22.2 | 23.2 | 24.0 | 24.9 | 25.8 | 26.6 | 27.5 | 28.3 |
| 44 | 20.4 | 21.3 | 22.2 | 23.1 | 24.0 | 24.8 | 25.7 | 26.5 | 27.3 | 28.2 |
| 45 | 20.3 | 21.2 | 22.1 | 23.0 | 23.9 | 24.7 | 25.6 | 26.4 | 27.2 | 28.0 |
| 46 | 20.2 | 21.1 | 22.0 | 22.9 | 23.8 | 24.6 | 25.4 | 26.2 | 27.0 | 27.8 |
| 47 | 20.2 | 21.1 | 21.9 | 22.8 | 23.6 | 24.5 | 25.3 | 26.1 | 26.8 | 27.6 |
| 48 | 20.1 | 21.0 | 21.8 | 22.7 | 23.5 | 24.3 | 25.1 | 25.9 | 26.6 | 27.4 |
| 49 | 20.0 | 20.9 | 21.7 | 22.6 | 23.4 | 24.2 | 25.0 | 25.7 | 26.4 | 27.1 |
| 50 | 19.9 | 20.8 | 21.6 | 22.4 | 23.2 | 24.0 | 24.8 | 25.5 | 26.2 | 26.9 |
| 51 | 19.8 | 20.7 | 21.5 | 22.3 | 23.1 | 23.8 | 24.6 | 25.3 | 25.9 | 26.6 |
| 52 | 19.7 | 20.6 | 21.4 | 22.1 | 22.9 | 23.6 | 24.3 | 25.0 | 25.7 | 26.3 |
| 53 | 19.6 | 20.4 | 21.2 | 22.0 | 22.7 | 23.4 | 24.1 | 24.7 | 25.3 | 25.9 |
| 54 | 19.5 | 20.3 | 21.0 | 21.8 | 22.5 | 23.2 | 23.8 | 24.4 | 25.0 | 25.6 |
| 55 | 19.3 | 20.1 | 20.8 | 21.6 | 22.2 | 22.9 | 23.5 | 24.1 | 24.6 | 25.2 |
| 56 | 19.2 | 19.9 | 20.6 | 21.3 | 22.0 | 22.6 | 23.2 | 23.7 | 24.3 | 24.7 |
| 57 | 19.0 | 19.7 | 20.4 | 21.1 | 21.7 | 22.3 | 22.8 | 23.4 | 23.8 | 24.3 |
| 58 | 18.8 | 19.5 | 20.2 | 20.8 | 21.4 | 21.9 | 22.5 | 22.9 | 23.4 | 23.8 |
| 59 | 18.6 | 19.3 | 19.9 | 20.5 | 21.1 | 21.6 | 22.0 | 22.5 | 22.9 | 23.2 |
| 60 | 18.4 | 19.0 | 19.6 | 20.2 | 20.7 | 21.2 | 21.6 | 22.0 | 22.4 | 22.7 |
| 61 | 18.1 | 18.7 | 19.3 | 19.8 | 20.3 | 20.7 | 21.1 | 21.5 | 21.8 | 22.1 |
| 62 | 17.8 | 18.4 | 18.9 | 19.4 | 19.9 | 20.3 | 20.6 | 21.0 | 21.2 | 21.5 |
| 63 | 17.5 | 18.1 | 18.5 | 19.0 | 19.4 | 19.8 | 20.1 | 20.4 | 20.6 | 20.8 |
| 64 | 17.2 | 17.7 | 18.1 | 18.6 | 18.9 | 19.3 | 19.5 | 19.8 | 20.0 | 20.2 |
| 65 | 16.8 | 17.3 | 17.7 | 18.1 | 18.4 | 18.7 | 18.9 | 19.2 | 19.3 | 19.5 |
| 66 | 16.5 | 16.9 | 17.3 | 17.6 | 17.9 | 18.1 | 18.3 | 18.5 | 18.7 | 18.8 |
| 67 | 16.1 | 16.4 | 16.8 | 17.1 | 17.3 | 17.5 | 17.7 | 17.9 | 18.0 | 18.1 |
| 68 | 15.6 | 16.0 | 16.3 | 16.5 | 16.7 | 16.9 | 17.1 | 17.2 | 17.3 | 17.4 |
| 69 | 15.2 | 15.5 | 15.7 | 16.0 | 16.1 | 16.3 | 16.4 | 16.5 | 16.6 | 16.7 |
| 70 | 14.7 | 15.0 | 15.2 | 15.4 | 15.5 | 15.7 | 15.8 | 15.8 | 15.9 | 15.9 |
| 71 | 14.2 | 14.4 | 14.6 | 14.8 | 14.9 | 15.0 | 15.1 | 15.2 | 15.2 | 15.2 |
| 72 | 13.7 | 13.9 | 14.1 | 14.2 | 14.3 | 14.4 | 14.4 | 14.5 | 14.5 | 14.5 |
| 73 | 13.2 | 13.3 | 13.5 | 13.6 | 13.7 | 13.7 | 13.8 | 13.8 | 13.8 | 13.9 |

TABLE VIII—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 74 | 12.6 | 12.8 | 12.9 | 13.0 | 13.0 | 13.1 | 13.1 | 13.1 | 13.2 | 13.2 |
| 75 | 12.1 | 12.2 | 12.3 | 12.4 | 12.4 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 |
| 76 | 11.5 | 11.6 | 11.7 | 11.8 | 11.8 | 11.8 | 11.8 | 11.9 | 11.9 | 11.9 |
| 77 | 11.0 | 11.1 | 11.1 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 |
| 78 | 10.4 | 10.5 | 10.5 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 |
| 79 | 9.9 | 9.9 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| 80 | 9.4 | 9.4 | 9.4 | 9.4 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 |
| 81 | 8.8 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 |
| 82 | 8.3 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 |
| 83 | 7.8 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 |
| 84 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 |
| 85 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 |
| 86 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 |
| 87 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 |
| 88 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 |
| 89 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 |
| 90 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| 91 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 |
| 92 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 |
| 93 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 |
| 94 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 |
| 95 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 |
| 96 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 |
| 97 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 |
| 98 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 99 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| 100 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 |
| 101 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 102 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 |
| 106 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

TABLE VIII—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 |
| 5 | 30.8 | 31.8 | 32.8 | 33.8 | 34.8 | 35.8 | 36.8 | 37.7 | 38.7 | 39.7 |
| 6 | 30.8 | 31.8 | 32.8 | 33.8 | 34.8 | 35.8 | 36.8 | 37.7 | 38.7 | 39.7 |
| 7 | 30.8 | 31.8 | 32.8 | 33.8 | 34.8 | 35.8 | 36.7 | 37.7 | 38.7 | 39.7 |
| 8 | 30.8 | 31.8 | 32.8 | 33.8 | 34.8 | 35.7 | 36.7 | 37.7 | 38.7 | 39.7 |
| 9 | 30.8 | 31.8 | 32.8 | 33.8 | 34.8 | 35.7 | 36.7 | 37.7 | 38.7 | 39.6 |
| 10 | 30.8 | 31.8 | 32.8 | 33.8 | 34.7 | 35.7 | 36.7 | 37.7 | 38.6 | 39.6 |
| 11 | 30.8 | 31.8 | 32.8 | 33.8 | 34.7 | 35.7 | 36.7 | 37.7 | 38.6 | 39.6 |
| 12 | 30.8 | 31.8 | 32.8 | 33.7 | 34.7 | 35.7 | 36.7 | 37.6 | 38.6 | 39.6 |
| 13 | 30.8 | 31.8 | 32.7 | 33.7 | 34.7 | 35.7 | 36.6 | 37.6 | 38.6 | 39.5 |
| 14 | 30.8 | 31.8 | 32.7 | 33.7 | 34.7 | 35.7 | 36.6 | 37.6 | 38.6 | 39.5 |
| 15 | 30.8 | 31.7 | 32.7 | 33.7 | 34.7 | 35.6 | 36.6 | 37.6 | 38.5 | 39.5 |
| 16 | 30.8 | 31.7 | 32.7 | 33.7 | 34.6 | 35.6 | 36.6 | 37.5 | 38.5 | 39.4 |
| 17 | 30.7 | 31.7 | 32.7 | 33.7 | 34.6 | 35.6 | 36.5 | 37.5 | 38.5 | 39.4 |
| 18 | 30.7 | 31.7 | 32.7 | 33.6 | 34.6 | 35.6 | 36.5 | 37.5 | 38.4 | 39.4 |
| 19 | 30.7 | 31.7 | 32.6 | 33.6 | 34.6 | 35.5 | 36.5 | 37.4 | 38.4 | 39.3 |
| 20 | 30.7 | 31.7 | 32.6 | 33.6 | 34.5 | 35.5 | 36.4 | 37.4 | 38.3 | 39.3 |

TABLE VIII—TEMPORARY LIFE ANNUITIES;[1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 |
| 21 | 30.7 | 31.6 | 32.6 | 33.6 | 34.5 | 35.5 | 36.4 | 37.4 | 38.3 | 39.2 |
| 22 | 30.6 | 31.6 | 32.6 | 33.5 | 34.5 | 35.4 | 36.4 | 37.3 | 38.2 | 39.2 |
| 23 | 30.6 | 31.6 | 32.5 | 33.5 | 34.4 | 35.4 | 36.3 | 37.3 | 38.2 | 39.1 |
| 24 | 30.6 | 31.5 | 32.5 | 33.5 | 34.4 | 35.3 | 36.3 | 37.2 | 38.1 | 39.0 |
| 25 | 30.6 | 31.5 | 32.5 | 33.4 | 34.3 | 35.3 | 36.2 | 37.1 | 38.1 | 39.0 |
| 26 | 30.5 | 31.5 | 32.4 | 33.4 | 34.3 | 35.2 | 36.2 | 37.1 | 38.0 | 38.9 |
| 27 | 30.5 | 31.4 | 32.4 | 33.3 | 34.2 | 35.2 | 36.1 | 37.0 | 37.9 | 38.8 |
| 28 | 30.5 | 31.4 | 32.3 | 33.3 | 34.2 | 35.1 | 36.0 | 36.9 | 37.8 | 38.7 |
| 29 | 30.4 | 31.4 | 32.3 | 33.2 | 34.1 | 35.0 | 35.9 | 36.8 | 37.7 | 38.6 |
| 30 | 30.4 | 31.3 | 32.2 | 33.1 | 34.1 | 35.0 | 35.8 | 36.7 | 37.6 | 38.5 |
| 31 | 30.3 | 31.2 | 32.2 | 33.1 | 34.0 | 34.9 | 35.8 | 36.6 | 37.5 | 38.3 |
| 32 | 30.3 | 31.2 | 32.1 | 33.0 | 33.9 | 34.8 | 35.6 | 36.5 | 37.4 | 38.2 |
| 33 | 30.2 | 31.1 | 32.0 | 32.9 | 33.8 | 34.7 | 35.5 | 36.4 | 37.2 | 38.0 |
| 34 | 30.1 | 31.0 | 31.9 | 32.8 | 33.7 | 34.6 | 35.4 | 36.2 | 37.1 | 37.9 |
| 35 | 30.1 | 31.0 | 31.8 | 32.7 | 33.6 | 34.4 | 35.3 | 36.1 | 36.9 | 37.7 |
| 36 | 30.0 | 30.9 | 31.7 | 32.6 | 33.5 | 34.3 | 35.1 | 35.9 | 36.7 | 37.4 |
| 37 | 29.9 | 30.8 | 31.6 | 32.5 | 33.3 | 34.1 | 34.9 | 35.7 | 36.5 | 37.2 |
| 38 | 29.8 | 30.7 | 31.5 | 32.3 | 33.2 | 34.0 | 34.7 | 35.5 | 36.2 | 37.0 |
| 39 | 29.7 | 30.5 | 31.4 | 32.2 | 33.0 | 33.8 | 34.5 | 35.3 | 36.0 | 36.7 |
| 40 | 29.6 | 30.4 | 31.2 | 32.0 | 32.8 | 33.6 | 34.3 | 35.0 | 35.7 | 36.4 |
| 41 | 29.4 | 30.2 | 31.0 | 31.8 | 32.6 | 33.3 | 34.1 | 34.7 | 35.4 | 36.0 |
| 42 | 29.3 | 30.1 | 30.9 | 31.6 | 32.4 | 33.1 | 33.8 | 34.4 | 35.1 | 35.7 |
| 43 | 29.1 | 29.9 | 30.7 | 31.4 | 32.1 | 32.8 | 33.5 | 34.1 | 34.7 | 35.3 |
| 44 | 28.9 | 29.7 | 30.5 | 31.2 | 31.9 | 32.5 | 33.2 | 33.8 | 34.3 | 34.9 |
| 45 | 28.8 | 29.5 | 30.2 | 30.9 | 31.6 | 32.2 | 32.8 | 33.4 | 33.9 | 34.4 |
| 46 | 28.5 | 29.3 | 30.0 | 30.6 | 31.3 | 31.9 | 32.4 | 33.0 | 33.5 | 33.9 |
| 47 | 28.3 | 29.0 | 29.7 | 30.3 | 30.9 | 31.5 | 32.0 | 32.5 | 33.0 | 33.4 |
| 48 | 28.1 | 28.7 | 29.4 | 30.0 | 30.6 | 31.1 | 31.6 | 32.1 | 32.5 | 32.9 |
| 49 | 27.8 | 28.4 | 29.0 | 29.6 | 30.2 | 30.7 | 31.1 | 31.5 | 31.9 | 32.3 |
| 50 | 27.5 | 28.1 | 28.7 | 29.2 | 29.7 | 30.2 | 30.6 | 31.0 | 31.4 | 31.7 |
| 51 | 27.2 | 27.8 | 28.3 | 28.8 | 29.3 | 29.7 | 30.1 | 30.4 | 30.7 | 31.0 |
| 52 | 26.8 | 27.4 | 27.9 | 28.4 | 28.8 | 29.2 | 29.5 | 29.8 | 30.1 | 30.3 |
| 53 | 26.5 | 27.0 | 27.4 | 27.9 | 28.3 | 28.6 | 28.9 | 29.2 | 29.4 | 29.6 |
| 54 | 26.1 | 26.5 | 27.0 | 27.4 | 27.7 | 28.0 | 28.3 | 28.5 | 28.7 | 28.9 |
| 55 | 25.6 | 26.1 | 26.5 | 26.8 | 27.1 | 27.4 | 27.6 | 27.8 | 28.0 | 28.1 |
| 56 | 25.2 | 25.6 | 25.9 | 26.2 | 26.5 | 26.7 | 26.9 | 27.1 | 27.2 | 27.3 |
| 57 | 24.7 | 25.0 | 25.3 | 25.6 | 25.8 | 26.0 | 26.2 | 26.3 | 26.5 | 26.5 |
| 58 | 24.1 | 24.4 | 24.7 | 25.0 | 25.2 | 25.3 | 25.5 | 25.6 | 25.7 | 25.7 |
| 59 | 23.6 | 23.8 | 24.1 | 24.3 | 24.4 | 24.6 | 24.7 | 24.8 | 24.9 | 24.9 |
| 60 | 23.0 | 23.2 | 23.4 | 23.6 | 23.7 | 23.8 | 23.9 | 24.0 | 24.0 | 24.1 |
| 61 | 22.3 | 22.5 | 22.7 | 22.9 | 23.0 | 23.1 | 23.1 | 23.2 | 23.2 | 23.3 |
| 62 | 21.7 | 21.9 | 22.0 | 22.1 | 22.2 | 22.3 | 22.3 | 22.4 | 22.4 | 22.4 |
| 63 | 21.0 | 21.1 | 21.3 | 21.4 | 21.4 | 21.5 | 21.5 | 21.6 | 21.6 | 21.6 |
| 64 | 20.3 | 20.4 | 20.5 | 20.6 | 20.6 | 20.7 | 20.7 | 20.7 | 20.8 | 20.8 |
| 65 | 19.6 | 19.7 | 19.8 | 19.8 | 19.9 | 19.9 | 19.9 | 19.9 | 19.9 | 20.0 |
| 66 | 18.9 | 19.0 | 19.0 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 | 19.1 |
| 67 | 18.2 | 18.2 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.3 | 18.4 | 18.4 |
| 68 | 17.4 | 17.5 | 17.5 | 17.5 | 17.5 | 17.6 | 17.6 | 17.6 | 17.6 | 17.6 |
| 69 | 16.7 | 16.7 | 16.8 | 16.8 | 16.8 | 16.8 | 16.8 | 16.8 | 16.8 | 16.8 |
| 70 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 | 16.0 |
| 71 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 | 15.3 |
| 72 | 14.6 | 14.6 | 14.6 | 14.6 | 14.6 | 14.6 | 14.6 | 14.6 | 14.6 | 14.6 |
| 73 | 13.9 | 13.9 | 13.9 | 13.9 | 13.9 | 13.9 | 13.9 | 13.9 | 13.9 | 13.9 |
| 74 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 | 13.2 |
| 75 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 | 12.5 |
| 76 | 11.9 | 11.9 | 11.9 | 11.9 | 11.9 | 11.9 | 11.9 | 11.9 | 11.9 | 11.9 |
| 77 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 | 11.2 |
| 78 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 | 10.6 |
| 79 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| 80 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 | 9.5 |
| 81 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 | 8.9 |
| 82 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 | 8.4 |
| 83 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 | 7.9 |
| 84 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 | 7.4 |
| 85 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 |
| 86 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 |
| 87 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 | 6.1 |
| 88 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 | 5.7 |

TABLE VIII—TEMPORARY LIFE ANNUITIES;[1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

| Age | Years— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 |
| 89 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 | 5.3 |
| 90 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| 91 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 |
| 92 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 | 4.4 |
| 93 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 | 4.1 |
| 94 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 | 3.9 |
| 95 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 | 3.7 |
| 96 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 | 3.4 |
| 97 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 | 3.2 |
| 98 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 99 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| 100 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 |
| 101 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 |
| 102 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 | 2.3 |
| 103 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| 104 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| 105 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 | 1.8 |
| 106 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| 107 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 |
| 108 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 | 1.3 |
| 109 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 110 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 111 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 | .9 |
| 112 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 | .8 |
| 113 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 | .7 |
| 114 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 | .6 |
| 115 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 | .5 |

[1] The multiples in this table are not applicable to annuities for a term certain; for such cases see paragraph (c) of § 1.72–5.

If (a) the terms of the contract involve a life or lives, and are such that the above tables cannot be correctly applied, and (b) the amounts received under the contract are at least partly "amounts received as an annuity" under a contract to which section 72 applies, the taxpayer may submit with his return an actuarial computation based upon the applicable annuity table (described below) with ages set back one year, showing the appropriate factors applied in his case, subject to the approval of the Commissioner upon examination of such return. The applicable annuity table is the 1937 Standard Annuity Table (if the investment in the contract does not include a post-June 1986 investment in the contract) or the gender-neutral version of the 1983 Basic Table (if the investment in the contract includes a post-June 1986 investment in the contract). In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, the actuarial computation shall be based on both tables in accordance with the principles of § 1.72–6(d). Computations involving factors to compensate for the effects of contingencies other than mortality, such as marriage or remarriage, re-employment, recovery from disability, or the like, will not be approved.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, as amended by T.D. 8115, 51 FR 45706, Dec. 19, 1986; 60 FR 16381, Mar. 30, 1995]

### § 1.72–10 Effect of transfer of contracts on investment in the contract.

(a) If a contract to which section 72 applies, or any interest therein, is transferred for a valuable consideration, by assignment or otherwise, only the actual value of the consideration given for such transfer and the amount of premiums or other consideration subsequently paid by the transferee shall be included in the transferee's aggregate of premiums or other consideration paid. In accordance with the provisions of section 72(g)(3) and paragraph (b) of § 1.72–4, an annuity starting date shall be determined for the transferee without regard to the annuity starting date, if any, of the transferor. In determining the transferee's investment in the contract, the aggregate amount of premiums or other consideration paid shall be reduced by all amounts received by the transferee before the receipt of an amount as an annuity or before the annuity starting date, whichever is the later, to the extent that such amounts were excludable from his gross income under the applicable income tax law at the time of receipt. For the treatment of amounts received by the transferee subsequent to both the annuity starting date and the date of receipt of a payment as an annuity, but not received as annuity payments, see §1.72–11. For a limitation on adjustments to the basis of annuity contracts sold, see section 1021.

(b) In the case of a transfer of such a contract without valuable consideration, the annuity starting date and the expected return under the contract shall be determined as though no such transfer had taken place. See paragraph (b) of §1.72–4. The transferee shall include the aggregate of premiums or other consideration paid or deemed to have been paid by his transferor in the aggregate of premiums or other consideration as though paid by him. In determining the transferee's investment in the contract, the transferee's aggregate amount of premiums or other consideration paid (as so found) shall be reduced by all amounts either received or deemed to have been received by himself or his transferor before the annuity starting date, or before the date on which an amount is first received as an annuity, whichever is the later, to the extent that such amounts were excludable from the gross income of the actual recipient under the applicable income tax law at the time of receipt. For treatment of amounts received subsequent to both the above dates by such transferee, but not received as annuity payments, see §1.72–11.

### §1.72–11 Amounts not received as annuity payments.

(a) *Introductory.* (1) This section applies to amounts received under a contract to which section 72 applies if either:

(i) Paragraph (b) of §1.72–2 is inapplicable to such amounts.

(ii) Paragraph (b) of §1.72–2 is applicable but the annuity payments received differ either in amount, duration, or both, from those originally provided under the contract, or

(iii) Paragraph (b) of §1.72 is applicable, but such annuity payments are received by a beneficiary after the death of an annuitant (or annuitants) in full discharge of the obligation under the contract and solely because of a guarantee.

The payments referred to in subdivision (i) of this subparagraph include all amounts other than ''amounts received as an annuity'' as that term is defined in paragraphs (b) (2) and (3) of §1.72–2. If such amounts are received as dividends or payments in the nature of dividends, or as a return of premiums, see paragraph (b) of this section. If such amounts are paid in full discharge of the obligation under the contract and are in the nature of a refund of the consideration, see paragraph (c) of this section. If such amounts are paid upon the surrender, redemption, or maturity of the contract, see paragraph (d) of this section. The payments referred to in subdivision (ii) of this subparagraph include all annuity payments which are paid as the result of a modification or an exchange of the annuity obligations originally provided under a contract for different annuity obligations (whether or not such modification or exchange is accompanied by the payment of an amount to which subdivision (i) of this subparagraph applies). If the duration of the new annuity obligations differs from the duration of the old annuity obligations, paragraph (e) of this section applies to the new annuity obligations and paragraph (d) of this section applies to any lump sum payment received. If, however, the duration of the new annuity obligations is the same as the duration of the old obligations, paragraph (f) of this section applies to the new obligations and to any lump sum received in connection therewith. The annuity payments referred to in subdivision (iii) of this subparagraph are annuity payments which are made to a beneficiary after the death of annuitant (or annuitants) in full discharge of the obligations under a contract because of a provision in the contract requiring the payment of a guaranteed amount or minimum number of payments for a fixed period; see paragraph (c) of this section.

(2) The principles of this section apply, to the extent appropriate thereto, to amounts paid which are taxable under section 72 (except, for taxable years beginning before January 1, 1964, section 72(e)(3)) in accordance with sections 402 and 403 and the regulations thereunder. However, if contributions used to purchase the contract include amounts for which a deduction was allowed under section 404 as contributions on behalf of an owner-employee, the rules of this section are modified by the rules of paragraph (b) of §1.72–17. Further, in applying the provisions of this section, the aggregate premiums or other consideration paid shall not include contributions on behalf of self-employed individuals to the extent that deductions were allowed under section 404 for such contributions. Nor, shall the aggregate of premiums or other consideration paid include amounts used to purchase life, accident, health, or other insurance protection for an owner-employee. See paragraph (b)(4) of §1.72–16 and paragraph (c) of §1.72–17. The principles of this section also apply to payments made in the manner described in paragraph (b)(3)(i) of §1.72–2.

(b) *Amounts received in the nature of dividends or similar distributions.* (1) If dividends (or payments in the nature of dividends or a return of premiums or other consideration) are received under a contract to which section 72 applies and such payments are received before the annuity starting date or before the date on which an amount is first received as an annuity, whichever is the later, such payments are includible in the gross income of the recipient only to the extent that they, taken together with all previous payments received under the contract which were excludable from the gross income of the recipient under the applicable income tax law, exceed the aggregate of premiums or other consideration paid or deemed to have been paid by the recipient. Such payments shall also be subtracted from the consideration paid (or deemed paid) both for the purpose of determining an exclusion ratio to be applied to subsequent amounts paid as an annuity and for the purpose of determining the applicability of section 72(d) and §1.72–13, relating to employee contributions recoverable in three years.

(2) If dividends or payments in the nature of dividends are paid under a contract to which section 72 applies and such payments are received on or after the annuity starting date or the date on which an amount is first received as an annuity, whichever is later, such payments shall be fully includible in the gross income of the recipient. The receipt of such payments shall not affect the aggregate of premiums or other consideration paid nor the amounts contributed or deemed to have been contributed by an employee as otherwise calculated for purposes of section 72. Since the investment in the contract and the expected return are not affected by a payment which is fully includible in the gross income of the recipient under this rule, the exclusion ratio will not be affected by such payment and will continue to be applied to amounts received as annuity payments in the future as though such payment had not been made. This subparagraph shall apply to amounts received under a contract described in paragraph (b)(3)(i) of §1.72–2 to the extent that the amounts received exceed the portion of the investment in the contract allocable to each taxable year in accordance with paragraph (d)(3) of §1.72–4. Hence, such excess is fully includible in the gross income of the recipient.

(c) *Amounts received in the nature of a refund of the consideration under a contract and in full discharge of the obligation thereof.* (1) Any amount received under a contract to which section 72 applies, if it is at least in part a refund of the consideration paid, including amounts payable to a beneficiary after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain or with a minimum amount which must be paid in any event, shall be considered an amount received in the nature of a refund of the consideration paid for such contract. If such an amount is in full discharge of an obligation to pay a fixed amount (whether in a lump sum or otherwise) or to pay amounts for a fixed number of years (including amounts described in paragraph (b)(3)(i) of § 1.72–2), it shall be included in the gross income of the recipient only to the extent that it, when added to amounts previously received under the contract which were excludable from gross income under the law applicable at the time of receipt, exceeds the aggregate of premiums or other consideration paid. See section 73(e)(2)(A). This paragraph shall not apply if the total of the amounts to be paid in discharge of the obligation can in any event exceed the total of the annuity payments which would otherwise fully discharge the obligation. For rules to be applied in such a case, see paragraph (e) of this section.

(2) The principles of subparagraph (1) of this paragraph may be illustrated by the following examples:

*Example 1.* A, a male employee, retired on December 31, 1954, at the age of 60. A life annuity of $75 per month was payable to him beginning January 31, 1955. The annuity contract guaranteed that if A did not live for at least ten years after his retirement his beneficiary, B, would receive the monthly payments for any balance of such ten-year period which remained at the date of A's death. Under section 72, A was deemed to have paid $3,600 toward the cost of the annuity. A lived for five years after his retirement receiving a total of $4,500 in annuity payments. After A's death, B began receiving the monthly payments of $75 beginning with the January 31, 1960 payment. B will exclude such payments from his gross income throughout 1960, 1961, and 1962, and will exclude only $18 of the first payment in 1963 from his gross income for that year. Thereafter, B will include the entire amount of all such payments in his gross income for the taxable year of receipt. This result is determined as follows:

| | | |
|---|---|---|
| A's investment in the contract (unadjusted) | | $3,600 |
| Multiple from Table III of § 1.72–9 for male, age 60, where duration of guaranteed amount is 10 years (percent) | 11 | |
| Subtract value of the refund feature to the nearest dollar (11 percent of $3,600) | | 396 |
| Investment in the contract adjusted for the present value of the refund feature without discount for interest | | 3,204 |
| Aggregate of premiums or other consideration paid | | 3,600 |
| A's exclusion ratio ($3,204÷$16,380 [$900×18.2]) (percent) | 19.6 | |
| Subtract amount excludable during five years A received payments (19.6 percent of $4,500 [$900×5]) | | 882 |
| Remainder of aggregate of premiums or other consideration paid excludable from gross income of B under section 72(e) | | 2,718 |

As a result of the above computation, the number of payments to B which will exhaust the remainder of consideration paid which is excludable from gross income of the recipient is 36 6/25 ($2,718÷$75) and B will exclude the payments from his gross income for three years, then exclude only $18 of the first payment for the fourth year from his gross income, and thereafter include the entire amount of all payments he receives in his gross income.

*Example 2.* The facts are the same as in example (1), except that B, the beneficiary, elects to receive $50 per month for his life in lieu of the payments guaranteed under the original contractual obligation. Since such amounts will be received as an annuity and may, because of the length of time B may live, exceed the amount guaranteed, they are not amounts to which this paragraph applies. See paragraph (e) of this section.

*Example 3.* The facts are the same as in example (1), except that B, the beneficiary, elects to receive the remaining guaranteed amount in installments which are larger or smaller than the $75 per month provided until, under the terms of the contract, the guaranteed amount is exhausted. The rule of subparagraph (1) of this paragraph and the computation illustrated in example (1) apply to such installments since the total of such installments will not exceed the original amount guaranteed to be paid at A's death in any event.

*Example 4.* C pays $12,000 for a contract providing that he is to be paid an annuity of $1,000 per year for 15 years. His exclusion ratio is therefore 80 percent ($12,000÷$15,000). He directs that the annuity is to be paid to D, his beneficiary, if he should die before the full 15-year period has expired. C dies after 5 years and D is paid $1,000 in 1960. D will include $200 ($1,000 − $800 [80 percent of $1,000]) in his gross income for the taxable year in which he receives the $1,000 since section 72(e) and this section do not apply to the annuity payments made in accordance with the provisions and during the term of the contract. D will continue with the same exclusion ratio used by C (80 percent).

*Example 5.* In 1954, E paid $50,000 into a fund and was promised an annual income for life the amount of which would depend in part upon the earnings realized from the investment of the fund in accordance with an agreed formula. The contract also specified that if E should die before ten years had elapsed, his beneficiary, F, would be paid the amounts determined annually under the formula until ten payments had been received by E and F together. E died in 1960, having received five payments totaling $30,000. Assuming that $22,000 of this amount was properly excludable from E's gross income prior to his death, F will exclude from his gross income the payments he receives until the taxable year in which his total receipts from the fund exceed $28,000 ($50,000 − $22,000). F will include any excess over the $28,000 in his gross income for that taxable year. Thereafter, F will include in his gross income the entire amount of any payments made to him from the fund.

*Example 6*. Assume the facts are the same as in example (1), except that the total investment in the contract is made after June 30, 1986, that A is to receive payments under the life annuity contract beginning on January 31, 1987, and that B will begin to receive the monthly payments on January 31, 1992. B will exclude the $75 monthly payments from gross income throughout 1992, 1993, and 1994. B will exclude only the first two monthly payments and $21 of the third monthly payment in 1995. This is determined as follows:

| | |
|---|---|
| A's investment in the contract (unadjusted) | $3,600 |
| Multiple from Table VII, age 60, 10 years (percent) | 4 |
| Subtract value of the refund feature (4 percent of $3,600 | $144 |
| Investment in the contract adjusted for the present value of the refund feature without discount for interest | $3,456 |
| Aggregate of premiums or other consideration paid | $3,600.00 |
| A's exclusion ratio ($3,456÷$21,780 [$900×24.2]) (percent) | 15.9 |
| Subtract amount excludable during five years A received payments (15.9 percent of $4,500 [$900×5]) | $715.50 |
| Remainder of aggregate of premiums or other consideration paid excludable from gross income of B under section 72(e) | $2,884.50 |

As a result of the above computation, the number of payments to B which will exhaust the remainder of consideration paid which is excludable from gross income of the recipient is 38²³⁄₅₀ ($2,884.50÷75) and B will exclude the payments from gross income for three years, then exclude only the first two monthly payments and $34.50 of the third. Thereafter B shall include the entire amount of all payments received in gross income.

(3) For the purpose of applying the rule contained in subparagraph (1) of this paragraph, it is immaterial whether the recipient of the amount received in full discharge of the obligation is the same person as the recipient of amounts previously received under the contract which were excludable from gross income, except in the case of a contract transferred for a valuable consideration, with respect to which see paragraph (a) of § 1.72–10. For the limit on the tax, for taxable years beginning before January 1, 1964, attributable to the receipt of a lump sum to which this paragraph applies, see paragraph (g) of this section.

(d) *Amounts received upon the surrender, redemption, or maturity of a contract*. (1) Any amount received upon the surrender, redemption, or maturity of a contract to which section 72 applies, which is not received as an annuity under the regulations of paragraph (b) of § 1.72–2, shall be included in the gross income of the recipient to the extent that it, when added to amounts previously received under the contract and which were excludable from the gross income of the recipient under the law applicable at the time of receipt, exceeds the aggregate of premiums or other consideration paid. See section 72(e)(2)(B). If amounts are to be received as an annuity, whether in lieu of or in addition to amounts described in the preceding sentence, such amounts shall be included in the gross income of the recipient in accordance with the provisions of paragraph (e) or (f) of this section, whichever is applicable. The rule stated in the first sentence of this paragraph shall not apply to payments received as an annuity or otherwise after the date of the first receipt of an amount as an annuity subsequent to the maturity, redemption, or surrender of the original contract. If amounts are so received and are other than amounts received as an annuity, they are includible in the gross income of the recipient. See section 72(e)(1)(A) and paragraph (b)(2) of this section.

(2) For the purpose of applying the rule contained in subparagraph (1) of this paragraph, it is immaterial whether the recipient of the amount received upon the surrender, redemption, or maturity of the contract is the same as the recipient of amounts previously received under the contract which were excludable from gross income, except in the case of a contract transferred for a valuable consideration, with respect to which see paragraph (a) of § 1.72–10. For the limit on the amount of tax, for taxable years beginning before January 1, 1964, attributable to the receipt of

certain lump sums to which this paragraph applies, see paragraph (g) of this section.

(e) *Periodic payments received for a different term.* If, after the date on which an amount is first received as an annuity under a contract to which section 72 applies, the terms of the contract are modified or the annuity obligations are exchanged so that periodic payments are to be received for a different term than originally provided under the contract (whether or not accompanied by the receipt of a lump sum to which paragraph (d) of this section applies), the rules of this paragraph shall apply to such payments. Hence, the provisions of section 72(e) and paragraphs (b), (c), (d), and (f) of this section are inapplicable for the purpose of determining the includibility of such payments in gross income and the general principles of section 72 with respect to the use of an exclusion ratio shall be applied to such payments as if they were provided under a new contract received in exchange for the contract providing the original annuity payments. If such payments are received as the result of the surrender, redemption, or discharge of a contract to which section 72 applies, they shall be considered to be received as an annuity under a contract exchanged for the contract whose redemption, surrender, or discharge was involved. For the purpose of determining the extent to which the payments so received are to be included in the gross income of the recipient, an exclusion ratio shall be determined for such contract as of the later of January 1, 1954, or the first day of the first period for which an amount is received as an annuity thereunder, whichever is the later. See paragraph (b) of §1.72–4. In determining the investment in the contract for this purpose, any lump sum amount received at the time of the exchange shall not be considered an amount to which paragraph (a)(2) of §1.72–6 applies. However, such lump sum shall be subtracted from the aggregate of premiums or other consideration paid to the extent it is excludable as an amount not received as an annuity under this section as if it were an amount received before the annuity starting date of the contract obtained in exchange.

(f) *Periodic payments received for the same term after a lump sum withdrawal.* (1) If, after the date of the first receipt of a payment as an annuity, the annuitant receives a lump sum and is thereafter to receive annuity payments in a reduced amount under the contract for the same term, life, or lives as originally specified in the contract, a portion of the contract shall be considered to have been surrendered or redeemed in consideration of the payment of such lump sum and the exclusion ratio originally determined for the contract shall continue to apply to the amounts received as an annuity without regard to the fact that such amounts are less than the original amounts which were to be paid periodically. The lump sum shall be includible in the gross income of the recipient in accordance with the provisions of subparagraph (2) of this paragraph. However, except in the case of amounts to which sections 402 and 403 apply, the tax, for taxable years beginning before January 1, 1964, attributable to the inclusion of all or part of the lump sum in gross income shall not exceed the amount determined under section 72(e)(3) and paragraph (g) of this section. For taxable years beginning after December 31, 1963, such amounts may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

(2) There shall be excluded from gross income that portion of the lump sum which bears the same ratio to the aggregate premiums or other consideration paid for the contract, as reduced by all amounts previously received under the contract and excludable from the gross income of the recipient under the applicable income tax law, as:

(i) In the case of payments to be made in the manner described in paragraph (b)(2) of §1.72–2, the amount of the reduction in the annuity payments to be made thereafter bears to the annuity payments originally provided under the contract, or

(ii) In the case of a contract providing for payments to be made in the manner described in paragraph (b)(3)(i) of §1.72–2, the amount of the reduction in the number of units per period to be paid thereafter bears to the number of units per period payable under the contract immediately before the lump sum withdrawal.

(3) This paragraph may be illustrated by the following examples:

*Example 1.* Taxpayer A pays $20,000 for an annuity contract providing for payments to him of $100 per month for his life. At the annuity starting date he has a life expectancy of 20 years. His expected return is therefore $24,000 and the exclusion ratio is five-sixths. He continues to receive the original annuity payments for 5 years, receiving a total of $6,000, and properly excludes a total of $5,000 from his gross income in his income tax returns for those years. At the beginning of the next year, A agrees with the insurer to take a reduced annuity of $75 per month and a lump sum payment of $4,000 in cash. Of the lump sum he receives, he will include $250 and exclude $3,750 from his gross income for his taxable year of receipt, determined as follows:

| | |
|---|---|
| Aggregate of premiums or other consideration paid | $20,000 |
| Less amounts received as an annuity to the extent they were excludable from A's income | $5,000 |
| Remainder of the consideration | $15,000 |
| Ratio of the reduction in the amount of the annuity payments to the original annuity payments | 25/$100 or ¼ |
| Lump sum received | $4,000 |
| Less one-fourth of the remainder of the consideration (¼ of $15,000) | $3,750 |
| Portion of the lump sum includible in gross income | $250 |

For taxable years beginning before January 1, 1964, the limit on tax of section 72(e)(3), as in effect before such date, applies to the portion of the lump sum includible in gross income. For taxable years beginning after December 31, 1963, such portion may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). If, in this example, the annuity were a pension payable to A as a retired employee, but the facts were otherwise the same (assuming that, for instance, the $20,000 aggregate of premiums or other consideration paid were A's contributions as determined under section 72(f) and § 1.72–8) the result would be the same except that the tax attributable to the inclusion of the $250 in A's gross income, for taxable years beginning before January 1, 1964, would not be limited by section 72(e)(3), as in effect before such date. If such a lump sum is received in a taxable year beginning after December 31, 1963, the portion of such sum includible in gross income may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

*Example 2.* Taxpayer B pays $30,000 for a contract providing for monthly payments to be made to him for 15 years with respect to the principal and earnings of 10 units of an investment fund. B receives $12,000 during the first 5 years of participation and of this amount he has properly excluded a total of $10,000 from his gross income in his income returns for the taxable years, since $2,000 of $2,400 he received in each such year represented his investment divided by the term of the annuity ($30,000÷15). At the beginning of the 6th year, B agrees to take $11,000 in a lump sum and thereafter to accept the payments arising with respect to five units for the remaining 10 years of payments in full discharge of the original obligations of the contract. B shall include $1,000 in his gross income for the 6th year as the result of the lump sum he receives and allocates $1,000 of his original investment in the contract to each of the remaining 10 years with respect to the payments which will continue, determined as follows:

| | |
|---|---|
| Aggregate of premiums or other consideration paid | $30,000 |
| Total amount received and excludable from gross income | $10,000 |
| Remainder of the consideration | $20,000 |
| Ratio of units discontinued to the total units originally provided | 5/10 or ½ |
| Lump sum received at the time of reduction in the number of units to be paid | $11,000 |
| Less one-half of the remainder of the consideration (½ of $20,000) | $10,000 |
| Portion of the lump sum received and includible in gross income | $1,000 |
| Remainder of the consideration less the portion of such remainder attributable to the excludable portion of the lump sum ($20,000 − $10,000) | $10,000 |
| Remainder of the consideration properly allocable to each taxable year for the remaining 10 years ($10,000÷10) | $1,000 |

For the taxable years beginning before January 1, 1964, the limit on tax of section 72(e)(3), as in effect before such date, applies to the portion of the lump sum received and includible in gross income. For taxable years beginning after December 31, 1963, such portion may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

(g) *Limit on tax attributable to the receipt of a lump sum.* (1) For taxable years beginning before January 1, 1964, if the entire amount of the proceeds received upon the redemption, maturity, surrender, or discharge of a contract to which section 72 applies is received in a lump sum and paragraph (c), (d), or (f) of this section is applicable in determining the portion of such amount which is includible in gross income, the tax attributable to such portion shall not exceed the tax which would have been attributable thereto had such portion been received ratably in the taxable year in which received and the 2 preceding taxable years. The amount of tax attributable to the includible portion of the lump sum received shall be the lesser of:

(i) The difference between the amount of tax for the taxable year of receipt computed by including such portion in gross income and the amount of tax for such taxable year computed by excluding such portion from gross income; or

(ii) The difference between the total amount of tax for the taxable year of receipt and the 2 preceding taxable years computed by including one-third of such portion in gross income for each of the 3 taxable years, and the total amount of the tax for the taxable year of receipt and the 2 preceding taxable years computed by entirely excluding such portion from the gross income of all 3 taxable years.

For the definition of "taxable year", see section 441(b). This subparagraph shall not apply, for taxable years beginning before January 1, 1964, to payments excepted from the application of section 72(e)(3), as in effect before such date, under the provisions of section 402 or 403. See paragraph (a) of § 1.72–2 and paragraph (d) of § 1.72–14.

(2) For taxable years beginning after December 31, 1963, any amount includible in gross income to which this section relates may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

(h) *Amounts deemed to be paid or received by a transferee.* Amounts deemed to have been paid or received by a transferee for the purposes of § 1.72–10 shall also be deemed to have been so paid or received by such transferee for the purposes of this section. Thus, if a donee is deemed to have paid the premiums or other consideration actually paid by his transferor for the purposes of section 72(g) and paragraph (b) of § 1.72–10, such consideration shall be deemed premiums or other consideration paid by the donee for the purposes of this section.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6885, 31 FR 7798, June 2, 1966; T.D. 8115, 51 FR 45734, Dec. 19, 1986]

### § 1.72–12 Effect of taking an annuity in lieu of a lump sum upon the maturity of a contract.

If a contract to which section 72 applies provides for the payment of a lump sum in full discharge of the obligation thereunder and the obligee entitled thereto, prior to receiving any portion of such lump sum and within 60 days after the date on which such lump sum first becomes payable, exercises an option or irrevocably agrees with the obligor to take, in lieu thereof, payments which will constitute "amounts received as an annuity", as that term is defined in paragraph (b) of § 1.72–2, no part of such lump sum shall be deemed to have been received by the obligee at the time he was first entitled thereto merely because he would have been entitled to such amount had he not exercised the option or made such an agreement with the obligor.

### § 1.72–13 Special rule for employee contributions recoverable in three years.

(a) *Amounts received as an annuity.* (1) Section 72(d) provides a special rule for the treatment of amounts received as an annuity by an employee (or by the beneficiary or beneficiaries of an employee) under a contract to which section 72 applies. This special rule is applicable only in the event that:

(i) At least part of the consideration paid for the contract is contributed by the employer, and

(ii) The aggregate amount receivable as an annuity under such contract by the employee (or by his beneficiary or beneficiaries if the employee died before any amount was received as an annuity under the contract) within the 3-year period beginning on the date (whether or not before January 1, 1954) on which an amount is first received as an annuity equals or exceeds the total consideration contributed (or deemed contributed under section 72(f) and § 1.72–8) by the employee as of such date as reduced by all amounts previously received and excludable from the gross income of the recipient under the applicable income tax law.

In such an event, section 72(d) provides that all amounts received as an annuity under the contract during a taxable year to which the Code applies shall be excluded from gross income until the total of the amounts excluded under that section plus all amounts excluded under prior income tax laws equals or exceeds the consideration contributed (or deemed contributed) by the employee. The excess, if any, and all amounts received by any recipient thereafter (whether or not received as an annuity), shall be fully included in gross income. See paragraph (b) of this section.

(2) If the aggregate amount receivable as an annuity under the contract within three years from the date on which an amount is first received as an annuity thereunder will not equal or exceed the consideration contributed (or deemed contributed) by the employee in accordance with the provisions of §1.72–8, computed as of such date, the special rule of section 72(d) shall not apply to amounts received as an annuity under the contract and the general rules of section 72 shall apply thereto.

(3) The aggregate of the amounts receivable as an annuity within the prescribed 3-year period shall be the total of all annuity payments anticipatable by an employee (or a beneficiary or beneficiaries of an employee, if the employee died before any amount was received as an annuity) under the contract as a whole as defined in paragraph (a) of §1.72–2. See paragraph (a)(3) of §1.72–2 for rules for determining what constitutes ''the contract'' in the case of distributions from an employees' trust or plan.

(4) If subparagraphs (1) and (3) of this paragraph apply to amounts received as an annuity under a contract, the rule prescribed in subparagraph (1) of this paragraph shall apply to all amounts so received thereunder regardless of the fact that they may be payable (i) to more than one beneficiary, (ii) for the same or different intervals, (iii) in different sums, or (iv) for a different period certain, life, or lives.

(5) For purposes of section 72(d), contributions which are made with respect to a self-employed individual and which are allowed as a deduction under section 404(a) are not considered contributions by the employee, but such contributions are considered contributions by the employer. A contribution which is deemed paid in a prior taxable year under the provisions of section 404(a)(6) shall be considered made with respect to a self-employed individual if the individual on whose behalf the contribution is made was self-employed for the taxable year in which the contribution is deemed paid, whether or not such individual is self-employed at the time the contribution is actually paid. Contributions with respect to a self-employed individual who is an owner-employee used to purchase life, accident, health, or other insurance protection for such owner-employee shall not be treated as consideration for the contract contributed by the employee in computing the employee contributions for purposes of section 72(d).

(b) *Amounts not received as an annuity.* If the rule of paragraph (a) of this section applies to a contract and, after the date on which an annuity payment is first received, amounts are received other than as an annuity under such contract in a taxable year to which the Code applies, they shall be included in the gross income of the recipient in accordance with the provisions of §1.72–11. Thus, if such amounts are received as a dividend or a similar distribution after the date on which an amount is first received as an annuity under the contract, they shall be included in the gross income of the recipient (in accordance with section 72(e)(1)(A) and paragraph (b)(2) of §1.72–11. All other amounts not received as an annuity shall be included in the gross income of the recipient in accordance with the provisions of section 72(e)(1)(B) and paragraph (c), (d), or (f), whichever is applicable, of §1.72–11. See section 72(e)(2).

(c) *Amounts received after the exhaustion of employee contributions.* (1) Amounts received under a contract to which the rule of paragraph (a) of this section applies (whether or not such amounts are received as an annuity) shall be included in the gross income of the recipient if such amounts are received after the date on which the aggregate of all amounts excluded from gross income by the recipients under section 72(d) and prior income tax laws equalled or exceeded the consideration contributed (or deemed contributed) by the employee.

(2) If the rule of paragraph (a) of this section applies to amounts received by an employee (or his beneficiary or beneficiaries) under a joint and survivor annuity contract, payments made to a prior annuitant may entirely exhaust the amounts excludable from gross income. In such case, amounts paid to the surviving annuitant (or annuitants) shall be included in gross income by such recipients.

(d) *Application of section 72(d) to a contract, trust, or plan providing for payments in a manner described in paragraph (b)(3)(i) of §1.72–2.* For the purpose of applying section 72(d) and this section, any amount received in the nature of a periodic payment under a contract, trust, or plan which provides for the payment of amounts in a manner described in paragraph (b)(3)(i) of §1.72–2 shall be considered an amount received as an annuity notwithstanding the provisions of any other section of the regulations under section 72. The special exclusion rule of section 72(d) and paragraph (a) of this section shall apply to all amounts so received if the first amount received, when multiplied by the number of periodic payments to be made within the three years beginning on the date of its receipt, results in an amount in excess of the aggregate premiums or other consideration contributed (or deemed contributed) by the employee as of that date. If more than one series of periodic payments is to be paid under the same contract, trust, or plan, all payments anticipatable, whether because fixed in amount or determinable in the manner described in the preceding sentence, shall be aggravated for the purpose of determining the applicability of section 72 (d) to the contract, trust, or plan as a whole.

(e) *Inapplicability of section 72(d) and this section.* Section 72(d) and this section do not apply to:

(1) Amounts received as proceeds of a life insurance contract to which section 101(a) applies, nor to

(2) Amounts paid to a surviving annuitant under a joint and survivor annuity contract to which paragraph (b)(3) of §1.72–5 applies, nor to

(3) Amounts paid to an annuitant under Chapter 73 of title 10 of the United States Code with respect to which section 72(o) and §1.122–1 apply.

See also paragraph (d) of §1.72–14.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6497, 25 FR 10021, Oct. 20, 1960; T.D. 6676, 28 FR 10135, Sept. 17, 1963; T.D. 7043, 35 FR 8477, June 2, 1970]

### § 1.72–14 Exceptions from application of principles of section 72.

(a) *Payments of interest.* If any amount is received under an agreement to pay interest on a sum or sums held by the obligor, such amount shall not be excludable from the gross income of the recipient under the provisions of section 72 to the extent that it is an actual interest payment. See section 72(j). An amount shall be considered to be held under an agreement to pay interest thereon if the amount payable after the term of the annuity (whether for a term certain or for a life or lives) is substantially equal to or larger than the aggregate amount of premiums or other consideration paid therefor. For this purpose, however, the aggregate amount of premiums or other consideration paid shall include all contributions made by an employer and not merely those to which section 72(f) applies.

(b) *Alimony payments.* To the extent that payments made to a wife are includable in her gross income by reason of either or both section 71 and 682, they shall not be excluded from the wife's gross income under the principles of section 72 although made under a contract to which that section applies. However, section 72 shall apply in the case of amounts received under such a contract if a husband and wife are entitled to make and do make a single return jointly.

(c) *Certain "face-amount certificates."* The principles of section 72 do not apply to "face-amount certificates" described in section 72(1) which were issued before January 1, 1955.

(d) *Employer plans.* The provisions of §§1.72–1 to 1.72–13, inclusive, shall be disregarded to the extent that they are inconsistent with the treatment of amounts received provided in section 402 (relating to the taxability of a beneficiary of an employees' trust), section 403 (relating to the taxation of employee annuities), or the regulations under either of such sections.

**§ 1.72–15 Applicability of section 72 to accident or health plans.**

(a) *Applicability of section.* This section provides the rules for determining the taxation of amounts received from an employer-established plan which provides for distributions that are taxable under section 72 (or for distributions that are taxable under section 402 (a)(2) or (e), or section 403(a)(2), in the case of lump sum distributions) and which also provides for distributions that may be excludable from gross income under section 104 or 105 as accident or health benefits. For example, this section will apply to a pension plan described in section 401 and exempt under section 501 which provides for the payment of pensions at retirement and the payment of an earlier pension in the event of permanent disability. This section will also apply to a profit-sharing plan described in section 401 and exempt under section 501 which provides for periodic distribution of the amount standing to the account of a participant during any period that the participant is absent from work due to a personal injury or sickness and for the distribution of any balance standing to the account of the participant upon his separation from service. For purposes of this section, the term ''contributions of the employee'' includes contributions by the employer which were includible in the employee's gross income. Paragraphs (d), (h), and (i) of this section apply for taxable years beginning on or after January 1, 2015.

(b) *General rule.* Section 72 does not apply to any amount received as an accident or health benefit, and the tax treatment of any such amount shall be determined under sections 104 and 105. See paragraphs (c) and (d) of this section, paragraph (d) of § 1.104–1, and §§ 1.105–1 through 1.105–5. Section 72 (or, in the case of certain total distributions, section 402(a)(2) or section 403(a)(2)) does apply to any amount which is received under a plan to which this section applies and which is not an accident or health benefit. See paragraph (e) of this section.

(c) *Accident or health benefits attributable to employee contributions.* (1) If a plan to which this section applies provides that any portion of the accident or health benefits is attributable to the contributions of the employee to such plan, then such portion of such benefits is excludable from gross income under section 104(a)(3) and paragraph (d) of § 1.104–1. Neither section 72 nor section 105 applies to any accident or health benefits (whether paid before or after retirement) attributable to contributions of the employee. Since such portion is excludable under section 104(a)(3), such portion is not subject to the dollar limitation of section 105(d) and if such portion is payable after the retirement of the employee, it is excludable without regard to the provisions of § 1.105–4 and section 72.

(2) In determining the taxation of any amounts received as accident or health benefits from a plan to which this section applies, the first step is to determine the portion, if any, of the contributions of the employee which is used to provide the accident or health benefits and the portion of the accident or health benefits attributable to such portion of the employee's contributions. If such a plan expressly provides that the accident or health benefits are provided in whole or in part by employee contributions and the portion of employee contributions to be used for such purpose, the contributions so used will be treated as used to provide accident or health benefits. However, if the plan does not expressly provide that the accident or health benefits are to be provided with employee contributions and the portion of employee contributions to be used for such purpose, it will be presumed that none of the employee contributions is used to provide such benefits. Thus, in the case of a contributory pension plan, it will be presumed that the disability pension is provided by employer contributions, unless the plan expressly provides otherwise, or in the case of a contributory profit-sharing plan providing that a portion of the amount standing to the account of each participant will be

used to purchase accident or health insurance, it will be presumed that such insurance is purchased with employer contributions, unless the plan expressly provides otherwise. Similarly, unless the plan expressly provides otherwise, it will be presumed that if a contributory profit-sharing plan provides for periodic distributions from the account of a participant during any absence from work because of a personal injury or sickness, all such distributions which do not exceed the contributions of the employer plus earnings thereon are provided by employer contributions.

(3) Any employee contributions that are treated under subparagraph (2) of this paragraph as used to provide accident or health benefits shall not be included for any purpose under section 72 as employee contributions or as aggregate premiums or other consideration paid. Thus, in the case of a pension plan, or in the case of a profit-sharing plan providing that a portion of the amount standing to the account of each participant will be used to purchase accident or health insurance, any employee whose contributions are so used must make the adjustment provided by this subparagraph irrespective of whether such employee receives any accident or health benefits under such plan. However, in the case of a profit-sharing plan providing for periodic distributions from the account of a participant during any absence from work because of a personal injury or sickness, an adjustment under this subparagraph is required only when an employee receives distributions in excess of the employer contributions and earnings thereon or receives distributions consisting in whole or in part of his own contributions.

(4) If any of the employee contributions are treated under subparagraph (2) of this paragraph as used to provide any of the accident or health benefits, the portion of the benefits attributable to employee contributions shall be determined in accordance with §1.105–1. Any accident or health benefits that are excludable under section 104(a)(3) shall not be included in the expected return for purposes of section 72.

(d) *Accident or health benefits attributable to employer contributions.* Any amounts received as accident or health benefits and not attributable to contributions of the employee are includible in gross income except to the extent that the amounts are excludable from gross income under section 105(b) or (c) and the regulations under those sections. See §1.402(a)–1(e) for rules relating to the use of a qualified plan under section 401(a) to pay premiums for accident or health insurance.

(e) *Other benefits under the plan.* The taxability of amounts that are received under a plan to which this section applies and that are not accident or health benefits is determined under section 72 (or, in the case of certain total distributions, under section 402(a)(2) or section 403(a)(2)) without regard to any exclusion or inclusion of accident or health benefits under sections 104 and 105. For example, the investment in the contract or aggregate premiums paid is determined without regard to the exclusion of any amount under section 104 or 105, and the annuity starting date is determined without regard to the receipt of any accident or health benefits. However, if any employee contributions are used to provide any accident or health benefits, the investment in the contract or aggregate premiums paid must be adjusted as provided in paragraph (c)(3) of this section.

(f) [Reserved]

(g) *Payments to or on behalf of a self-employed individual.* A self-employed individual is not considered an employee for purposes of section 105, relating to amounts received by employees under accident and health plans, nor for purposes of excluding under section 104(a)(3) amounts received by him under an accident and health plan as referred to in section 105(e). See section 105(g) and paragraph (a) of §1.105–1. Therefore, the other paragraphs of this section are not applicable to amounts received by or on behalf of a self-employed individual. Except where accident or health benefits are provided through an insurance contract or an arrangement having the effect of insurance, all amounts received by or on behalf of a self-employed individual from a plan described in section 401(a) and exempt under section 501(a) or a plan described in section 403(a) shall be taxed as otherwise provided in section 72, 402, or 403. If the accident or health benefits are paid under an insurance contract or under an arrangement having the effect of insurance, section 104(a)(3) shall apply. Section 72 shall not apply to any amounts received under such circumstances. For the treatment of the amounts paid for such accident or health benefits, see section 404(e)(3) and paragraph (f) of § 1.404(e)–1.

(h) *Medical benefits for retired employees, etc.* See § 1.402(a)–1(e)(2) for rules relating to the payment of medical benefits described in section 401(h) under a qualified pension or annuity plan.

(i) *Special rules*—(1) *In general.* For purposes of section 72(b) and (d) and this section, the taxpayer must maintain such records as are necessary to substantiate the amount treated as an investment in the taxpayer's annuity contract.

(2) *Delegation to Commissioner.* The Commissioner may prescribe a form and instructions with respect to the taxpayer's past and current treatment of amounts received under section 72 or 105, and the taxpayer's computation, or recomputation, of the taxpayer's investment in his or her annuity contract. This form may be required to be filed with the taxpayer's returns for years in which the amounts are excluded under section 72 or 105.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6676, 28 FR 10135, Sept. 17, 1963; T.D. 6722, 29 FR 5069, Apr. 14, 1964; T.D. 6770, 29 FR 15366, Nov. 17, 1964; T.D. 7352, 40 FR 16664, Apr. 14, 1975; T.D. 9665, 79 FR 26841, May 12, 2014]

### § 1.72–16 Life insurance contracts purchased under qualified employee plans.

(a) *Applicability of section.* This section provides rules for the tax treatment of premiums paid under qualified pension, annuity, or profit-sharing plans for the purchase of life insurance contracts and rules for the tax treatment of the proceeds of such a life insurance contract and of annuity contracts purchased under such plans. For purposes of this section, the term "life insurance contract" means a retirement income, an endowment, or other contract providing life insurance protection. The rules of this section apply to plans covering only common-law employees as well as to plans covering self-employed individuals.

(b) *Treatment of cost of life insurance protection.* (1) The rules of this paragraph are applicable to any life insurance contract—

(i) Purchased as a part of a plan described in section 403(a), or

(ii) Purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) if the proceeds of such contract are payable directly or indirectly to a participant in such trust or to a beneficiary of such participant.

The proceeds of a contract described in subdivision (ii) of this subparagraph will be considered payable indirectly to a participant or beneficiary of such participant where they are payable to the trustee but under the terms of the plan the trustee is required to pay over all of such proceeds to the beneficiary.

(2) If under a plan or trust described in subparagraph (1) of this paragraph, amounts which were allowed as a deduction under section 404, or earnings of the trust, are applied toward the purchase of a life insurance contract described in subparagraph (1) of this paragraph, the cost of the life insurance protection under such contract shall be included in the gross income of the participant for the taxable year or years in which such contributions or earnings are so applied.

(3) If the amount payable upon death at any time during the year exceeds the cash value of the insurance policy at the end of the year, the entire amount of such excess is considered current life insurance protection. The cost of such insurance will be considered to be a reasonable net premium cost, as determined by the Commissioner, for such amount of insurance for the appropriate period.

(4) The amount includible in the gross income of the employee under this paragraph shall be considered as premiums or other consideration paid or contributed by the employee only with respect to any benefits attributable to the contract (within the meaning of paragraph (a)(3) of § 1.72–2) providing the life insurance protection. However, if under the rules of this

paragraph an owner-employee is required to include any amounts in his gross income, such amounts shall not in any case be treated as part of his investment in the contract.

(5) The determination of the cost of life insurance protection may be illustrated by the following example:

*Example*. An annual premium policy purchased by a qualified trust for a common-law employee provides an annuity of $100 per month upon retirement at age 65, with a minimum death benefit of $10,000. The insurance payable if death occurred in the first year would be $10,000. The cash value at the end of the first year is 0. The net insurance is therefore $10,000 minus 0, or $10,000. Assuming that the Commissioner has determined that a reasonable net premium cost for the employee's age is $5.85 per $1,000, the premium for $10,000 of life insurance is therefore $58.50, and this is the amount to be reported as income by the employee for his taxable year in which the premium is paid. The balance of the premium is the amount contributed for the annuity, which is not taxable to the employee under a plan meeting the requirements of section 401(a), except as provided under section 402(a). Assuming that the cash value at the end of the second year is $500, the net insurance would then be $9,500 for the second year. With a net 1-year term rate of $6.30 for the employee's age in the second year, the amount to be reported as income to the employee would be $59.85.

(6) This paragraph shall not apply if the trust has a right under any circumstances to retain any part of the proceeds of the life insurance contract. But see paragraph (c)(4) of this section relating to the taxability of the distribution of such proceeds to a beneficiary.

(c) *Treatment of proceeds of life insurance and annuity contracts.* (1) If under a qualified pension, annuity, or profit-sharing plan, there is purchased either—

(i) A life insurance contract described in paragraph (b)(1) of this section, and the employee either paid the cost of the insurance or was taxable on the cost of the insurance under paragraph (b) of this section, or

(ii) An annuity contract,

the amounts payable under any such contract by reason of the death of the employee are taxable under the rules of subparagraph (2) of this paragraph, except in the case of a joint and survivor annuity.

(2)(i) In the case of an annuity contract, the death benefit is the accumulation of the premiums (plus earnings thereon) which is intended to fund pension or other deferred benefits under a pension, annuity, or profit-sharing plan. Such death benefits are not in the nature of life insurance and are not excludable from gross income under section 101(a).

(ii) In the case of a life insurance contract under which there is a reserve accumulation which is intended to fund pension or other deferred benefits under a pension, annuity, or profit-sharing plan, such reserve accumulation constitutes the source of the cash value of the contract and approximates the amount of such cash value. The portion of the proceeds paid upon the death of the insured employee which is equal to the cash value immediately before death is not excludable from gross income under section 101(a). The remaining portion, if any, of the proceeds paid to the beneficiary by reason of the death of the insured employee—that is, the amount in excess of the cash value—constitutes current insurance protection and is excludable under section 101(a).

(iii) The death benefit under an annuity contract, or the portion of the death proceeds under a life insurance contract which is equal to the cash value of the contract immediately before death, constitutes a distribution under the plan consisting in whole or in part of deferred compensation and is taxable to the beneficiary in accordance with section 72(m)(3) and the provisions of this paragraph, except to the extent that the limited exclusion from income provided in section 101(b) is applicable.

(iv) In the case of a life insurance contract under which the benefits are paid at a date or dates later than the death of the employee, section 101(d) is applicable only to the portion of the benefits which is attributable to the amount excludable under section 101(a). The portion of such benefits which is attributable to the cash value of the contract immediately before death is taxable under section 72, and in such case, any amount excludable under section 101(b) is treated as additional consideration paid by the employee in accordance with section 101(b)(2)(D).

(3) The application of the rules under subparagraph (2) of this paragraph with respect to the taxability of proceeds of a life insurance contract paid by reason of the death of an insured common-law employee who has paid no contributions under the plan is illustrated by the following examples:

*Example 1.*

| | |
|---|---|
| Total face amount of the contract payable in a lump sum at time of death | $25,000 |
| Cash value of the contract immediately before death | 11,000 |
| Excess over cash value, excludable under section 101(a) | 14,000 |
| Cash value subject to limited exclusion under section 101(b) | 11,000 |
| Excludable under section 101(b) (assuming that there is no other death benefit paid by or on behalf of any employer with respect to the employee) | 5,000 |
| Balance taxable in accordance with section 402(a)(2) or 403(a)(2) (assuming a total distribution in one taxable year of the distributee) | 6,000 |
| Portion of premiums taxed to employee under the provisions of paragraph (b) of this section and considered as contributions of the employee | 940 |
| Balance taxable as long-term capital gain | 5,060 |

*Example 2.* The facts are the same as in example (1), except that the contract provides that the beneficiary may elect within 60 days after the death of the employee either to take the $25,000 or to receive 10 annual installments of $3,000 each, and the beneficiary elects to receive the 10 installments. In addition, the employee's rights to the cash value immediately before his death were forfeitable at least to the extent of $5,000. Section 101(d) is applicable to the amount excludable under section 101(a), that is, $14,000. The portion of each annual installment of $3,000 which is attributable to this $14,000 is determined by allocating each installment in accordance with the ratio which this $14,000 bears to the total amount which was payable at death ($25,000). Accordingly, the portion of each annual installment which is subject to section 101(d) is $1,680 (14/25 of $3,000), of which $1,400 (1/10 of $14,000) is excludable under section 101(a), and the remaining $280 is includible in the gross income of the beneficiary. However, if the beneficiary is a surviving spouse as defined in section 101(d)(3), the exclusion provided by section 101(d)(1)(B) is applicable to such $280. The remaining portion of each annual $3,000 installment, $1,320, is attributable to the cash value of the contract and is treated under section 72, as follows:

| | |
|---|---|
| Amount actually contributed by the employee | 0 |
| Amount considered contributed by employee by reason of section 101(b) | $5,000 |
| Portion of premiums taxed to employee under the provisions of paragraph (b) of this section and considered as contributions of the employee | $940 |
| Investment in the contract | $5,940 |
| Expected return, 10×$1,320 | $13,200 |
| Exclusion ratio, $5,940÷$13,200 | 0.45 |
| Annual exclusion, 0.45×$1,320 | $594 |

Accordingly, $594 of the $1,320 portion of each annual installment is excludable each year under section 72, and the remaining $726 is includible. Thus, if the beneficiary is not a surviving spouse, a total of $1,006 ($280 plus $726) of each annual $3,000 installment is includible in income each year. If the beneficiary is a surviving spouse, and can exclude all of the $280 under section 101(d)(1)(B), the amount includible in gross income each year is $726 of each annual $3,000 installment.

(4) If an employee neither paid the total cost of the life insurance protection provided under a life insurance contract, nor was taxable under paragraph (b) of this section with respect thereto, no part of the proceeds of such a contract which are paid to the beneficiaries of the employee as a death benefit is excludable under section 101(a). The entire distribution is taxable to the beneficiaries under section 402(a) or 403(a) except to the extent that a limited exclusion may be allowable under section 101(b).

[T.D. 6676, 28 FR 10135, Sept. 17, 1963]

## § 1.72–17 Special rules applicable to owner-employees.

(a) *In general.* Under section 401(c) and section 403(a), certain self-employed individuals may participate in qualified pension, annuity, and profit-sharing plans, and the amounts received by such individuals from such plans are taxable under section 72. Section 72(m) and this section contain special rules for the taxation of amounts received from qualified pension, profit-sharing, or annuity plans covering an owner-employee. For purposes of section 72 and the regulations thereunder, the term ''employee'' shall include the self-employed individual who is treated as an employee by section 401(c)(1) (see paragraph (b) of § 1.401–10), and the term ''owner-employee'' has the meaning assigned to it in section 401(c)(3) (see paragraph (d) of § 1.401–10). See also paragraph (a)(2) of § 1.401–10 for the rule for determining when a plan covers an owner-employee. For purposes of this section, a self-employed individual may not treat as consideration for the contract contributed by the employee any contributions under the plan for which deductions were allowed under section 404 and which, consequently, are considered employer contributions.

(b) *Certain amounts received before annuity starting date.* (1) The rules of this paragraph are applicable to amounts received from a qualified pension, profit-sharing, or annuity plan by an employee (or his beneficiary) who is or was an owner-employee with respect to such plan when such amounts—

(i) Are received before the annuity starting date; and

(ii) Are not received as an annuity.

For the definition of annuity starting date, see paragraph (b) of §1.72–4 and subparagraph (4) of this paragraph. As to what constitutes amounts not received as an annuity, see paragraphs (c) and (d) of §1.72–11.

(2) Amounts to which this paragraph applies shall be included in the recipient's gross income for the taxable year in which received. However, the sum of the amounts so included under this subparagraph in all taxable years shall not exceed the aggregate deductions allowed under section 404 for premiums or other consideration paid under the plan on behalf of the employee while he was an owner-employee, including any such deductions taken in the taxable year of receipt.

(3) Any amounts to which this paragraph applies and which are not includible in gross income under the rules of subparagraph (2) of this paragraph shall be subject to the provisions of section 72(e) and §1.72–11. However, for taxable years beginning before January 1, 1964, section 72(e)(3), as in effect before such date, shall not apply to such amounts. For taxable years beginning after December 31, 1963, such amounts (other than amounts subject to a penalty under section 72(m)(5) and paragraph (e) of this section) may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

(4) Under section 401(d)(4), a qualified pension, profit-sharing, or annuity plan may not provide for distributions to an owner-employee before he reaches age 59½ years, except in the case of his earlier disability. Therefore, in the case of a distribution from a qualified plan to an individual for whom contributions have been made to the plan as an owner-employee, the annuity starting date cannot be prior to the time such individual attains the age 59½ years unless he is entitled to benefits before reaching such age because of his disability. For taxable years beginning after December 31, 1966, see section 72(m)(7) and paragraph (f) of this section for the meaning of disabled. For taxable years beginning before January 1, 1967, see section 213(g)(3) for the meaning of disabled.

(5) The rules of this paragraph are not applicable to amounts credited to an individual in his capacity as a policy-holder of an annuity, endowment, or life insurance contract which are in the nature of a dividend or refund of premium, and which are applied in accordance with paragraph (a)(4) of §1.404(a)–8 towards the purchase of benefits under the policy.

(6) The rules of this paragraph may be illustrated by the following example:

*Example.* B, a self-employed individual, received $8,000 as a distribution under a qualified pension plan before the annuity starting date. At the time of such distribution, $10,000 had been contributed (the whole amount being allowed as a deduction) under the plan on behalf of such individual while he was a common-law employee and $5,000 had been contributed under the plan on his behalf while he was an owner-employee, of which $2,500 was allowed as a deduction. In addition, B had contributed $1,000 on his own behalf as an employee under the plan. Of the $8,000, $2,500 (the amount allowed as a deduction with respect to contributions on behalf of the individual while he was an owner-employee) is includable in gross income under subparagraph (2) of this paragraph. With respect to the remaining $5,500, B has a basis of $3,500, consisting of the $2,500 contributed on his behalf while he was an owner-employee which was not allowed as a deduction and the $1,000 which B contributed as an employee. The difference between the $5,500 and B's basis of $3,500, or $2,000, is includable in gross income under section 72(e).

(c) *Amounts paid for life, accident, health, or other insurance.* Amounts used to purchase life, accident, health, or other insurance protection for an owner-employee shall not be taken into account in computing the following:

(1) The aggregate amount of premiums or other consideration paid for the contract for purposes of determining the investment in the contract under section 72(c)(1)(A) and § 1.72–6;

(2) The consideration for the contract contributed by the employee for purposes of section 72(d)(1) and § 1.72–13, which provide the method of taxing employees' annuities where the employee's contributions will be recoverable within 3 years; and

(3) The aggregate premiums or other consideration paid for purposes of section 72(e)(1)(B) and § 1.72–11, which provide the rules for taxing amounts not received as annuities prior to the annuity starting date.

The cost of such insurance protection will be considered to be a reasonable net premium cost, as determined by the Commissioner, for the appropriate period.

(d) *Amounts constructively received.* (1) If during any taxable year an owner-employee assigns or pledges (or agrees to assign or pledge) any portion of his interest in a trust described in section 401(a) which is exempt from tax under section 501(a), or any portion of the value of a contract purchased as part of a plan described in section 403(a), such portion shall be treated as having been received by such owner-employee as a distribution from the trust or as an amount received under the contract during such taxable year.

(2) If during any taxable year an owner-employee receives, either directly or indirectly, any amount from any insurance company as a loan under a contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as part of a plan described in section 403(a), and issued by such insurance company, such amount shall be treated as an amount received under the contract during such taxable year. An owner-employee will be considered to have received an amount under a contract if a premium, which is otherwise in default, is paid by the insurance company in the form of a loan against the cash surrender value of the contract. Further, an owner-employee will be considered to have received an amount to which this subparagraph applies if an amount is received from the issuer of a face-amount certificate as a loan under such a certificate purchased as part of a qualified trust or plan.

(e) *Penalties applicable to certain amounts received by owner-employees.* (1)(i) The rules of this paragraph are applicable to amounts, to the extent includable in gross income, received from a trust described in section 401(a) or under a plan described in section 403(a) by or on behalf of an individual who is or has been an owner-employee with respect to such plan or trust—

(*a*) Which are received before the owner-employee reaches the age 59½ years and which are attributable to contributions paid on behalf of such owner-employee (whether or not paid by him) while he was an owner-employee (see subdivision (ii) of this subparagraph),

(*b*) Which are in excess of the benefits provided for such owner-employee under the plan formula (see subdivision (iii) of this subparagraph), or

(*c*) Which are received by reason of a distribution of the owner-employee's entire interest under the provisions of section 401(e)(2)(E), relating to excess contributions on behalf of an owner-employee which are willfully made.

(ii) The amounts referred to in subdivision (i)(*a*) of this subparagraph do not include—

(*a*) Amounts received by reason of the owner-employee becoming disabled, or

(*b*) Amounts received by the owner-employee in his capacity as a policyholder of an annuity, endowment, or life insurance contract which are in the nature of a dividend or similar distribution.

Amounts attributable to contributions paid on behalf of an owner-employee and which are paid to a person other than the owner-employee before the owner-employee dies or reaches the age 59½ shall be considered received by the owner-employee for purposes of this paragraph. For taxable years beginning after December 31, 1966, see section 72(m)(7) and paragraph (f) of this section for the meaning of disabled. For taxable years beginning before January 1, 1967, see section 213(g)(3) for the meaning of disabled. For taxable years beginning after December 31, 1968, if an amount is not included in the amounts referred to in subdivision (i)(*a*) of this subparagraph solely by reason of the owner-employee becoming disabled and if a penalty would otherwise be applicable with respect to all or a portion of such amount, then for the taxable year in which such amount is received, there must be submitted with the owner-employee's income tax return a doctor's statement as to the impairment, and a statement by the owner-employee with respect to the effect of such impairment upon his substantial gainful activity and the date such impairment occurred. For taxable years which are subsequent to the first taxable year beginning after December 31, 1968, with respect to which the statements referred to in the preceding sentence are submitted, the owner-employee may, in lieu of such statements, submit a statement declaring the continued existence (without substantial diminution) of the impairment and its continued effect upon his substantial gainful activity.

(iii) This paragraph applies to amounts described in subdivision (i)(*b*) of this subparagraph (relating to excess benefits) even though a portion of such amounts may be attributable to contributions made on behalf of an individual while he was not an owner-employee and even though the amounts are received by his successor. However, these amounts do not include the portion of a distribution to which section 402(a)(2) or 403(a)(2) (relating to certain total distributions in one taxable year) applies.

(iv)(*a*) For purposes of subdivision (i)(*a*) of this subparagraph, the portion of any distribution or payment attributable to contributions on behalf of an employee-participant while he was an owner-employee includes the contributions made on his behalf while he was an owner-employee and the increments in value attributable to such contributions.

(*b*) The increments in value of an individual's account may be allocated to contributions on his behalf while he was an owner-employee either by maintaining a separate account, or an accounting, which reflects the actual increment attributable to such contributions, or by the method described in (*c*) of this subdivision.

(*c*) Where an individual is covered under the same plan both as an owner-employee and as a nonowner-employee, the portion of the increment in value of his interest attributable to contributions made on his behalf while he was an owner-employee may be determined by multiplying the total increment in value in his account by a fraction. The numerator of the fraction is the total contributions made on behalf of the individual as an owner-employee, weighted for the number of years that each contribution was in the plan. The denominator is the total contributions made on behalf of the individual, whether or not an owner-employee, weighted for the number of years each contribution was in the plan. The contributions are weighted for the number of years in the plan by multiplying each contribution by the number of years it was in the plan. For purposes of this computation, any forfeiture allocated to the account of the individual is treated as a contribution to the account made at the time so allocated.

(*d*) The method described in (*c*) of this subdivision may be illustrated by the following example:

*Example*. B was a member of the XYZ Partnership and a participant in the partnership's profit-sharing plan which was created in 1963. Until the end of 1967, B's interest in the partnership was less than 10 percent. On January 1, 1968, B obtained an interest in excess of 10 percent in the partnership and continued to participate in the profit-sharing plan until 1972. During 1972, prior to the time he attained the age of 59½ years and during a time when he was not disabled, B withdrew his entire interest in the profit-sharing plan. At that time his interest was $15,000, $9,600 contributions and $5,400 increment attributable to the contributions. The portion of the increment attributable to contributions while B was an owner-employee is $667.80, determined as follows:

| | A | B | C |
|---|---|---|---|
| | Contribution | Number of years contribution was in trust— | Contribution weighted for years in trust (A×B) |
| 1972 | $1,000 | 0 | 0 |
| 1971 | 800 | 1 | 800 |
| 1970 | 1,200 | 2 | 2,400 |
| 1969 | 600 | 3 | 1,800 |

| | A | B | C |
|---|---|---|---|
| | Contribution | Number of years contribution was in trust— | Contribution weighted for years in trust (A×B) |
| 1968 | 200 | 4 | 800 |
| 1967 | 400 | 5 | 2,000 |
| 1966 | 2,000 | 6 | 12,000 |
| 1965 | 1,000 | 7 | 7,000 |
| 1964 | 1,500 | 8 | 12,000 |
| 1963 | 900 | 9 | 8,100 |
| Total | $9,600 | | 46,900 |

Total weighted contributions as owner-employee (1968–1972)—5,800.

Total weighted contributions—46,900.

$5,400×(5,800÷46,900) = $667.80

(2)(i) If the aggregate of the amounts to which this paragraph applies received by any person in his taxable year equals or exceeds $2,500 the tax with respect to such amount shall be the greater of—

(*a*) The increase in tax attributable to the inclusion of the amounts so received in his gross income for the taxable year in which received, or

(*b*) 110 percent of the aggregate increase in taxes, for such taxable year and the four immediately preceding taxable years, which would have resulted if such amounts had been included in such person's gross income ratably over such taxable years. However, if deductions were allowed under section 404 for contributions to the plan on behalf of the individual as an owner-employee for less than four prior taxable years (whether or not consecutive), the number of immediately preceding taxable years taken into account shall be the number of prior taxable years in which such deductions were allowed.

(ii) If the aggregate of the amounts to which this paragraph applies received by any person in his taxable year is less than $2,500, the tax with respect to such amounts shall be 110 percent of the increase in tax which results from including such amounts in the person's gross income for the taxable year in which received.

(3)(i) For purposes of making the ratable inclusion computations of subparagraph (2)(i) of this paragraph, the taxable income of the recipient for each taxable year involved (notwithstanding section 63, relating to definition of taxable income) shall be treated as being not less than the amount required to be treated as includible in the taxable year pursuant to the ratable inclusion.

(ii) For purposes of subparagraph (2)(i)(*a*) and (ii) of this paragraph, the recipient's taxable income (notwithstanding section 63, relating to definition of taxable income) shall be treated as being not less than the aggregate of the amounts to which this paragraph applies reduced by the deductions allowed the recipient for such taxable year under section 151 (relating to deductions for personal exemptions).

(iii) In any case in which the application of subdivision (i) or (ii) of this subparagraph results in an increase in taxable income for any taxable year, the resulting increase in taxes imposed by section 1 or 3 for such taxable year shall be reduced by the credits against tax provided by section 31 (tax withheld on wages) and section 39 (certain uses of gasoline and lubricating oil), but shall not be reduced by any other credits against tax.

(4) The application of the rules of subparagraph (2)(i) and (3) of this paragraph may be illustrated by the following example:

*Example.* B, a sole proprietor and a calendar-year basis taxpayer, established a qualified pension trust to which he made annual contributions for 10 years of 10 percent of his earned income. B withdrew his entire interest in the trust during 1973 when he was 55 years old and not disabled and for which, without regard to the distribution, he had a net operating loss and for which he is allowed under section 151 a deduction for one personal exemption. The portion of the distribution includible in B's gross income is $25,750. In addition, B had a net operating loss for 1972. The other 3 taxable years involved in the computation under subparagraph (2)(i) of this paragraph were years of substantial income. For purposes of determining B's increase in tax attributable to the receipt of the $25,750 (before the application of the provisions of subparagraph (2)(i)(*b*) of this paragraph), B's taxable income for the year he received the $25,750 is treated, under subparagraph (3)(ii) of this paragraph, as being $25,000 ($25,750 minus $750, the amount of the deduction allowed for each personal exemption under section 151 for 1973). For purposes of determining whether 110 percent of the aggregate increase in taxes which would have resulted if 20 percent of the amount of the withdrawal had been included in B's gross income for the year of receipt and for each of the 4 preceding taxable years is greater (and thus is the amount of his increase in tax attributable to the receipt of the $25,750), B's taxable income for the taxable year of receipt, and for the immediately preceding taxable year, is treated, under subparagraph (3)(i) of this paragraph, as being $5,150 ($25,750 divided by 5).

(f) *Meaning of disabled.* (1) For taxable years beginning after December 31, 1966, section 72(m)(7) provides that an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. In determining whether an individual's impairment makes him unable to engage in any substantial gainful activity, primary consideration shall be given to the nature and severity of his impairment. Consideration shall also be given to other factors such as the individual's education, training, and work experience. The substantial gainful activity to which section 72(m)(7) refers is the activity, or a comparable activity, in which the individual customarily engaged prior to the arising of the disability (or prior to retirement if the individual was retired at the time the disability arose).

(2) Whether or not the impairment in a particular case constitutes a disability is to be determined with reference to all the facts in the case. The following are examples of impairments which would ordinarily be considered as preventing substantial gainful activity:

(i) Loss of use of two limbs;

(ii) Certain progressive diseases which have resulted in the physical loss or atrophy of a limb, such as diabetes, multiple sclerosis, or Buerger's disease;

(iii) Diseases of the heart, lungs, or blood vessels which have resulted in major loss of heart or lung reserve as evidenced by X-ray, electrocardiogram, or other objective findings, so that despite medical treatment breathlessness, pain, or fatigue is produced on slight exertion, such as walking several blocks, using public transportation, or doing small chores;

(iv) Cancer which is inoperable and progressive;

(v) Damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation, or memory;

(vi) Mental diseases (e.g. psychosis or severe psychoneurosis) requiring continued institutionalization or constant supervision of the individual;

(vii) Loss or diminution of vision to the extent that the affected individual has a central visual acuity of no better than 20/200 in the better eye after best correction, or has a limitation in the fields of vision such that the widest diameter of the visual fields subtends an angle no greater than 20 degrees;

(viii) Permanent and total loss of speech;

(ix) Total deafness uncorrectible by a hearing aid.

The existence of one or more of the impairments described in this subparagraph (or of an impairment of greater severity) will not, however, in and of itself always permit a finding that an individual is disabled as defined in section 72(m)(7). Any impairment, whether of lesser or greater severity, must be evaluated in terms of whether it does in fact prevent the individual from engaging in his customary or any comparable substantial gainful activity.

(3) In order to meet the requirements of section 72(m)(7), an impairment must be expected either to continue for a long and indefinite period or to result in death. Ordinarily, a terminal illness because of disease or injury would result in disability. Indefinite is used in the sense that it cannot reasonably be anticipated that the impairment will, in the foreseeable future, be so diminished as no longer to prevent substantial gainful activity. For example, an individual who suffers a bone fracture which prevents him from working for an extended period of time will not be considered disabled, if his recovery can be expected in the foreseeable future; if the fracture persistently fails to knit, the individual would ordinarily be considered disabled.

(4) An impairment which is remediable does not constitute a disability within the meaning of section 72(m)(7). An individual will not be deemed disabled if, with reasonable effort and

safety to himself, the impairment can be diminished to the extent that the individual will not be prevented by the impairment from engaging in his customary or any comparable substantial gainful activity.

(g) *Years to which this section applies.* This section applies to taxable years ending before September 3, 1974. For taxable years ending after September 2, 1974, see § 1.72–17A.

[T.D. 6676, 28 FR 10136, Sept. 17, 1963, as amended by T.D. 6885, 31 FR 7800, June 2, 1966; T.D. 6985, 33 FR 19811, Dec. 27, 1968; T.D. 7114, 36 FR 9018, May 18, 1971; T.D. 7636, 44 FR 47049, Aug. 10, 1979]

### § 1.72–17A Special rules applicable to employee annuities and distributions under deferred compensation plans to self-employed individuals and owner-employees.

(a) *In general.* Section 72(m) and this section contain special rules for the taxation of amounts received from qualified pension, profit-sharing, or annuity plans covering an owner-employee. This section applies to such amounts for taxable years of the recipient ending after September 2, 1974, unless another date is specified. For purposes of this section, the term ''employee'' shall include the self-employed individual who is treated as an employee by section 401(c)(1), and the term ''owner-employee'' has the meaning assigned to it in section 401(c)(3). Paragraph (b) of this section provides rules dealing with the computation of consideration paid by self-employed individuals and paragraph (c) of this section provides rules dealing with such computation when insurance is purchased for owner-employees. Paragraph (d) of this section provides rules for constructive receipt and, for purposes of these rules, treats as an owner-employee an individual for whose benefit an individual retirement account or annuity described in section 408 (a) or (b) is maintained after December 31, 1974. Paragraph (e) of this section provides rules for penalties provided by section 72(m)(5) with respect to certain distributions received by owner-employees or their successors. Paragraph (f) of this section provides rules for determining whether a person is disabled within the meaning of section 72(m)(7). See § 1.72–16, relating to life insurance contracts purchased under qualified employee plans, for rules under section 72(m)(3).

(b) *Computation of consideration paid by self-employed individuals.* Under section 72(m)(2), consideration paid or contributed for the contract by any self-employed individual shall for purposes of section 72 be deemed not to include any contributions paid or contributed under a plan described in paragraph (a), or any other plan of deferred compensation described in section 404(a) (whether or not qualified), if the contributions are—

(1) Paid under such plan with respect to a time during which the employee was an employee only by reason of sections 401(c)(1) and 404(a)(8), and

(2) Deductible under section 404 by the employer, including an employer within the meaning of sections 401(c)(4) and 404(a)(8), of such self-employed individual at the time of such payment, or subsequent to such time of payment.

For purposes of this paragraph the term ''consideration paid or contributed for the contract'' has the same meaning as under subparagraphs (1), (2), and (3) of paragraph (c) of this section.

(c) *Amounts paid for life, accident, health, or other insurance.* Under section 72(m)(2), amounts used to purchase life, accident, health, or other insurance protection for an owner-employee shall not be taken into account in computing the following:

(1) The aggregate amount of premiums or other consideration paid for the contract for purposes of determining the investment in the contract under section 72(c)(1)(A) and § 1.72–6;

(2) The consideration for the contract contributed by the employee for purposes of section 72(d)(1) and § 1.72–13, which provide the method of taxing employee's annuities where the employee's contributions will be recoverable within 3 years; and

(3) The aggregate premiums or other consideration paid for purposes of section 72(e)(1)(B) and § 1.72–11, which provide the rules for taxing amounts not received as annuities prior to the annuity starting date.

The cost of such insurance protection will be considered to be a reasonable net premium cost, as determined by the Commissioner, for the appropriate period.

(d) *Amounts constructively received.* (1) The references in this paragraph (d) to section 72(m)(4) are to that section as in effect on August 13, 1982. Section 236(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324) repealed section 72(m)(4), generally effective for assignments, pledges and loans made after August 13, 1982, and added section 72(p). See section 72(p) and §1.72(p)–1 for rules governing the income tax treatment of certain assignments, pledges and loans from qualified employer plans made after August 13, 1982.

(2) Under section 72(m)(4)(A), if during any taxable year an owner-employee assigns or pledges (or agrees to assign or pledge) any portion of his interest in a trust described in section 401(a) which is exempt from tax under section 501(a), or any portion of the value of a contract purchased as part of a plan described in section 403(a), such portion shall be treated as having been received by such owner-employee as a distribution from the trust or as an amount received under the contract during such taxable year.

(3)(i) Under paragraphs (4)(A) and (6) of section 72(m), if after December 31, 1974, during any taxable year an individual for whose benefit an individual retirement account or annuity described in section 408 (a) or (b) is maintained assigns or pledges (or agrees to assign or pledge) any portion of his interest in such account or annuity, such portion shall be treated as having been received by such individual as a distribution from such account or trust during such taxable year. See subsections (d) and (f) of section 408 and the regulations thereunder for the tax treatment of an amount treated as a distribution under this subparagraph.

(ii) Notwithstanding subdivision (i) of this subparagraph, if an individual retirement account or annuity, or portion thereof, is subject to the additional tax imposed by section 408(f), that amount shall be deemed not to be a distribution under section 72(m)(4)(A) and subdivision (i) of this subparagraph.

(4) Under section 72(m)(4)(B), if during any taxable year an owner-employee receives, either directly or indirectly, any amount from any insurance company as a loan under a contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as part of a plan described in section 403(a), and issued by such insurance company, such amount shall be treated as an amount received under the contract during such taxable year. An owner-employee will be considered to have received an amount under a contract if a premium, which is otherwise in default, is paid by the insurance company in the form of a loan against the cash surrender value of the contract. Further, an owner-employee will be considered to have received an amount to which this subparagraph applies if an amount is received from the issuer of a face-amount certificate as a loan under such a certificate purchased as part of a qualified trust or plan.

(e) *Penalties applicable to certain amounts received with respect to owner-employees under section 72(m)(5).* (1)(i) For taxable years of the recipient beginning after December 31, 1975, if any person receives an amount to which subparagraph (2) of this paragraph applies, his tax under Chapter 1 for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year.

(ii) For taxable years of the recipient beginning before January 1, 1976, see subparagraph (3) of this paragraph.

(2)(i) This subparagraph is applicable to amounts, to the extent includible in gross income, received from a qualified trust described in section 401(a) or under a plan described in section 403(a) by or on behalf of an individual who is or has been an owner-employee with respect to such trust or plan—

(A) Which are received before the owner-employee reaches the age of 59½ years, and which are attributable to contributions paid on behalf of such owner-employee by his employer (that is employer contributions within the meaning of section 401(c)(5)(A) and the increments in value attributable to such employer contributions) and the increments in value attributable to contributions made by him as an owner-employee while he was an owner-employee (that is, the increments attributable to owner-employee contributions within the meaning of section 401(c)(5)(B), but not such contributions; see subdivision (ii) of this subparagraph).

(B) Which are in excess of the benefits provided for such owner-employee under the plan formula (see subdivision (iii) of this subparagraph), or

(C) Which are subject to the transitional rules with respect to willful excess contributions made on behalf of an owner-employee in his employer's taxable years which begin before January 1, 1976 (see subdivision (v) of this subparagraph).

(ii) The amounts referred to in subdivision (i)(A) of this subparagraph do not include—

(A) Amounts received by reason of the owner-employee becoming disabled (see paragraph (f) of this section).

(B) Amounts received by the owner-employee in his capacity as a policyholder of an annuity, endowment, or life insurance contract which are in the nature of a dividend or similar distribution, or

(C) Amounts attributable to contributions (and increments in value thereon) made for years for which the recipient was not an owner-employee.

If an amount is not included in the amounts referred to in subdivision (i)(A) of this subparagraph solely by reason of the owner-employee's becoming disabled and if a penalty would otherwise be applicable with respect to all or a portion of such amount, then for the owner-employee's taxable year in which such amount is received, there must be submitted with his income tax return a doctor's statement as to the impairment, and a statement by the owner-employee with respect to the effect of such impairment upon his substantial gainful activity and the date such impairment occurred. For taxable years which are subsequent to the first taxable year with respect to which the statements referred to in the preceding sentence are submitted, the owner-employee may, in lieu of such statements, submit a statement declaring the continued existence (without substantial diminution) of the impairment and its continued effect upon his substantial gainful activity.

(iii) This subparagraph applies to amounts described in subdivision (i)(B) of this subparagraph (relating to benefits in excess of the plan formula) even though a portion of such amounts may be attributable to contributions made on behalf of an individual while he was not an owner-employee and even if he is deceased and the amounts are received by his successor.

(iv)(A) The rules described in subdivisions (i)(A) and (iii) of this subparagraph, relating to the treatment under section 72(m)(5)(A)(i) of certain premature distributions, may be illustrated by the following example:

*Example*. (1) A was a member of the X partnership, consisting of partners A through I, and a participant in the partnership's qualified profit-sharing plan which was established on January 1, 1972. A's taxable years, the X partnership's taxable years, the plan years, and other relevant years are all calendar years at all relevant times. For the three calendar years, 1972 through 1974, A was an owner-employee in the X partnership. On January 1, 1975, new partners J and K became partners in the X partnership, and as of that date, each of partners A through K held a 1/11 interest in the capital and profits of the X partnership. On that date, A became a partner who was not an owner-employee. A continued in this status for the 2 calendar years 1975 and 1976. On January 1, 1977, when A was 50 years old and not disabled, he liquidated his interest in the X partnership and became an employee of an unrelated employer. On that date, A received a distribution representing his entire interest in the X partnership's plan of $54,000 cash in violation of the plan provision required by section 401(d)(4)(B). As of that date, the distribution was attributable to the following sources and times, computed by the plan in a manner consistent with the subparagraph:

| Calendar years | A<br>X contributions on behalf of A deductible under sec. 404 | B<br>A's contributions made as an employee | C<br>Increments in value attributable to column A yearly contributions | D<br>Increments in value attributable to column B yearly contributions |
|---|---|---|---|---|
| 1977 | 0 | 0 | 0 | 0 |
| 1976 | $7,500 | $2,500 | $900 | $300 |

| Calendar years | A<br>X contributions on behalf of A deductible under sec. 404 | B<br>A's contributions made as an employee | C<br>Increments in value attributable to column A yearly contributions | D<br>Increments in value attributable to column B yearly contributions |
|---|---|---|---|---|
| 1975 | 7,500 | 2,500 | 4,000 | 1,300 |
| 1974 | 7,500 | 2,500 | 1,800 | 700 |
| 1973 | 2,500 | 2,500 | 1,200 | 1,200 |
| 1972 | 2,500 | 2,500 | 1,300 | 1,300 |
| Totals | 27,500 | 12,500 | 9,200 | 4,800 |

(*2*) The amount of the $54,000 distribution to which subdivision (i)(A) of this subparagraph applies is $20,000, computed as follows:

| | |
|---|---|
| X contributions on behalf of A made in years A was an owner-employee: | |
| 1974 | $7,500 |
| 1973 | 2,500 |
| 1972 | 2,500 |
| Total | 12,500 |
| Increments in value attributable to such contributions: | |
| 1974 | 1,800 |
| 1973 | 1,200 |
| 1972 | 1,300 |
| Total | 4,300 |
| Increments in value attributable to contributions made by A as an employee for years in which he was an owner-employee: | |
| 1974 | 700 |
| 1973 | 1,200 |
| 1972 | 1,300 |
| Total | 3,200 |
| Grand total | 20,000 |

In this example, the $20,000 amount computed above would be includible in A's gross income for 1977 and would be subject to the 10 percent tax described in subparagraph (1)(i) of this paragraph.

(*3*) Subdivision (i)(A) of this subparagraph does not apply to the contributions made by X on behalf of A for 1976 and 1975 ($7,500 each year, totaling $15,000) nor to the increments in value attributable to those contributions ($900 for 1976 and $4,000 for 1975, totaling $4,900), because A was not an owner-employee with respect to these two years, 1976 and 1975, on account of which these employer contributions were made. For the same reason, subdivision (i)(A) of this subparagraph does not apply to the increments in value attributable to A's contributions for 1976 and 1975 ($300 and $1,300, respectively, totaling $1,600).

See section 4972(c) for the amount of employee contributions which is permitted to be contributed by an owner-employee (as an employee) without subjecting an owner-employee to the tax on excess contributions.

(*4*) Subdivision (i)(A) of this subparagraph does not apply to the contributions made by A, as an employee during the years when he was an owner-employee ($2,500 during each of the years 1972, 1973, and 1974, totaling $7,500), because the distribution was received in a taxable year of A ending after September 2, 1974; see subparagraph (3) of this paragraph. Furthermore, because the distribution of the amount of A's contributions ($12,500) constitutes consideration for the contract paid by A for purposes of section 72, the $7,500 amount described in the preceding sentence is not includible in his gross income, and that amount is not subject to the rules of this subparagraph; see subdivision (i) of this subparagraph, and paragraphs (b) and (c) of this section.

(B) The increments in value of an individual's account may be allocated to contributions on his behalf, by his employer or by such individual as an owner-employee, while he was an owner-employee either by maintaining a separate account, or an accounting, which reflects the actual increment attributable to such contributions, or by the method described in (C) of this subdivision.

(C) Where an individual is covered under the same plan both as an owner-employee and as a non-owner-employee, the portion of the increment in value of his interest attributable to contributions made on his behalf while he was an owner-employee may be determined by multiplying the total increment in value in his account by a fraction. The numerator of the fraction is the total contributions made on behalf of the individual as an owner-employee, weighted for the number of years that each contribution was in the plan. The denominator is the total contributions made on behalf of the individual, whether or not as an owner-employee, weighted for the number of years each contribution was in the plan. The contributions are weighted for the number of years in the plan by multiplying each contribution by the number of years it was in the plan. For purposes of this computation, any forfeiture allocated to the account of the individual is treated as a contribution to the account made at the time so allocated. For purposes of this computation, where the individual has received a prior distribution from such account, an appropriate adjustment must be made to reflect such prior distribution.

(D) The method described in (C) of this subdivision may be illustrated by the following example:

*Example.* B was a member of the XYZ Partnership and a participant in the partnership's profit-sharing plan which was created in 1973. Until the end of 1977, B's interest in the partnership was less than 10 percent. On January 1, 1978, B obtained an interest in excess of 10 percent in the partnership and continued to participate in the profit-sharing plan until 1982. During 1982, prior to the time he attained the age of 59½ years and during a time when he was not disabled, B, who had not received any prior plan distributions, withdrew his entire interest in the profit-sharing plan. At the time his interest was $15,000, $9,600 contributions and $5,400 increment attributable to the contributions. The portion of the increment attributable to contributions while B was an owner-employee is $667.80, determined as follows:

| | A | B | C |
|---|---|---|---|
| | Contribution | Number of years contribution was in trust | Contribution weighted for years in trust (A×B) |
| 1982 | $1,000 | 0 | 0 |
| 1981 | 800 | 1 | 800 |
| 1980 | 1,200 | 2 | 2,400 |
| 1979 | 600 | 3 | 1,800 |
| 1978 | 200 | 4 | 800 |
| 1977 | 400 | 5 | 2,000 |
| 1976 | 2,000 | 6 | 12,000 |
| 1975 | 1,000 | 7 | 7,000 |
| 1974 | 1,500 | 8 | 12,000 |
| 1973 | 900 | 9 | 8,100 |
| Total | 9,600 | | 46,900 |

Total weighted contributions as owner-employee (1978–1982)=$5,800.

Total weighted contributions=$46,900.

$$\$5{,}400 \times (5{,}800 \div 46{,}900) = \$667.80$$

(E)(*1*) The rules set forth in subdivision (iv)(E)(*2*) of this subparagraph shall be used to determine the amounts to which subdivision (i)(A) of this subparagraph applies in the case of a distribution of less than the entire balance of the employee's account from a plan in which he has been covered at different times as owner-employee or as an employee other than an owner-employee.

(*2*) Distributions or payments from a plan for any employee taxable year shall be deemed to be attributable to contributions to the plan, and increments thereon, in the following order—

(*i*) Excess contributions, within the meaning of section 4972 (b), designated as such by the trustee;

(*ii*) Employee contributions;

(*iii*) Employer contributions, other than those described in (*i*), and the increments in value attributable to the employee's own contributions and his employer's contributions on the basis of the taxable years of his employer in succeeding order of time whether or not the employee was an owner-employee for any such year.

For purposes of (*iii*) of this subdivision, the time of contributions made on the basis of any employer taxable year shall take into account the rule specified in section 404(a)(6), relating to time when contributions deemed made.

(v) The amounts referred to in subdivision (i)(C) of this subparagraph are amounts which are received by reason of a distribution of the owner-employee's entire interest under the provisions of section 401(e)(2)(E), as in effect on September 1, 1974, relating to excess contributions on behalf of an owner-employee which are willfully made. Notwithstanding the preceding sentence, an owner-employee's entire interest in all plans with respect to which he is an owner-employee (within the meaning of subsections (d)(8)(C) and (e)(2)(E)(ii) of section 401, as in effect on September 1, 1974) does not include any distribution or payment attributable to his employer's contributions or his own contributions made with respect to his employer's taxable years beginning after December 31, 1975. However, his entire interest in all plans does include all of the distribution or payment attributable to his employer's contributions and his own contributions made with respect to all of his employer's taxable years beginning before January 1, 1976, if any portion thereof is attributable in whole or in part to such a willful excess contribution and such entire interest is received because of a willful excess contribution pursuant to section 401(e)(2)(E)(ii). A distribution or payment is described in the preceding sentence even though it is received in an owner-employee's taxable year beginning after December 31, 1975. For purposes of computing the increments in value attributable to employer taxable years which begin before January 1, 1976, and such increments attributable to such years beginning after December 31, 1975, the rules specified in subdivision (iv)(B), (C), (D), and (E) of this subparagraph shall be applied to the extent applicable. See §1.401(e)–4(c) for transitional rules with respect to contributions described in this subdivision.

(3)(i) For taxable years of the recipient beginning before January 1, 1976, the tax with respect to amounts to which subparagraph (2) of this paragraph applies shall be computed under subparagraphs (B), (C), (D), and (E) of section 72(m)(5) as such subparagraphs were in effect prior to the amendments made by subsections (g)(1) and (2)(A) of section 2001 of the Employee Retirement Income Security Act of 1974 (88 Stat. 957) except as provided in subdivisions (ii) and (iii) of this subparagraph (see paragraph (e) of §1.72–17). For purposes of the preceding sentence, amounts to which subparagraph (2) of this paragraph applies in the case of an amount described in section 72(m)(5)(A)(i) shall be determined under subdivisions (i)(*a*) and (ii) of §1.72–17(e)(1), except as provided in subdivision (ii) of this subparagraph. For purposes of the first sentence of this subdivision, amounts to which subparagraph (2) of this paragraph applies in the case of an amount described in section 72(m)(5)(A)(ii) shall be determined under subdivisions (i)(*b*) and (iii) of §1.72–17(e)(1), except as provided in subdivision (iii) of this subparagraph.

(ii) For purposes of applying section 72(m)(5)(A)(i), after the amendment made by section 2001(h)(3) of such Act, and subdivisions (i)(*a*) and (ii) of §1.72–17(e)(1), to a distribution or payment received in recipient taxable years ending after September 2, 1974, and beginning before January 1, 1976, with respect to contributions made on behalf of an owner-employee which were made by him as an owner-employee (that is, employee contributions within the meaning of section 401(c)(5)(B)) the portion of any distribution or payment attributable to such contributions shall not include such contributions but shall include the increments in value attributable to such contributions.

(iii) For purposes of applying section 72(m)(5)(D) and subdivisions (i)(*b*) and (iii) of §1.72–17(e)(1) to recipient taxable years beginning after December 31, 1973, and beginning before January 1, 1976, in the case of distributions or payments made after December 31, 1973, the amounts to which section 402 (a)(2) or 403(a)(2) applies after the amendments made by section 2005(b) (1) and (2) of such Act (88 Stat. 990 and 991) (which are amounts to which subdivision (i)(*b*) of §1.72–17(e)(1) does not apply) shall be deemed to be the amount which is treated as a gain from the sale or exchange of a capital asset held for more than 6 months under either of such sections.

(f) *Meaning of disabled.* (1) Section 72(m)(7) provides that an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. In determining whether an individual's impairment makes him unable to engage in any substantial gainful activity, primary consideration shall be given to the nature and severity of his impairment. Consideration shall also be given to other factors such as the individual's education, training, and work experience. The substantial gainful activity to which section 72(m)(7) refers is the activity, or a comparable activity, in which the individual customarily engaged prior to the arising of the disability or prior to retirement if the individual was retired at the time the disability arose.

(2) Whether or not the impairment in a particular case constitutes a disability is to be determined with reference to all the facts in the case. The following are examples of impairments which would ordinarily be considered

as preventing substantial gainful activity:

(i) Loss of use of two limbs;

(ii) Certain progressive diseases which have resulted in the physical loss or atrophy of a limb, such as diabetes, multiple sclerosis, or Buerger's disease;

(iii) Diseases of the heart, lungs, or blood vessels which have resulted in major loss of heart or lung reserve as evidenced by X-ray, electrocardiogram, or other objective findings, so that despite medical treatment breathlessness, pain, or fatigue is produced on slight exertion, such as walking several blocks, using public transportation, or doing small chores;

(iv) Cancer which is inoperable and progressive;

(v) Damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation, or memory;

(vi) Mental diseases (e.g. psychosis or severe psychoneurosis) requiring continued institutionalization or constant supervision of the individual;

(vii) Loss or diminution of vision to the extent that the affected individual has a central visual acuity of no better than 20/200 in the better eye after best correction, or has a limitation in the fields of vision such that the widest diameter of the visual fields subtends an angle no greater than 20 degrees;

(viii) Permanent and total loss of speech;

(ix) Total deafness uncorrectible by a hearing aid.

The existence of one or more of the impairments described in this subparagraph (or of an impairment of greater severity) will not, however, in and of itself always permit a finding that an individual is disabled as defined in section 72(m)(7). Any impairment, whether of lesser or greater severity, must be evaluated in terms of whether it does in fact prevent the individual from engaging in his customary or any comparable substantial gainful activity.

(3) In order to meet the requirements of section 72(m)(7), an impairment must be expected either to continue for a long and indefinite period or to result in death. Ordinarily, a terminal illness because of disease or injury would result in disability. The term ''indefinite'' is used in the sense that it cannot reasonably be anticipated that the impairment will, in the foreseeable future, be so diminished as no longer to prevent substantial gainful activity. For example, an individual who suffers a bone fracture which prevents him from working for an extended period of time will not be considered disabled, if his recovery can be expected in the foreseeable future; if the fracture persistently fails to knit, the individual would ordinarily be considered disabled.

(4) An impairment which is remediable does not constitute a disability within the meaning of section 72(m)(7). An individual will not be deemed disabled if, with reasonable effort and safety to himself, the impairment can be diminished to the extent that the individual will not be prevented by the impairment from engaging in his customary or any comparable substantial gainful activity.

[T.D. 7636, 44 FR 47049, Aug. 10, 1979, as amended by T.D. 8894, 65 FR 46591, July 31, 2000]

### § 1.72–18 Treatment of certain total distributions with respect to self-employed individuals.

(a) *In general.* The Self-Employed Individuals Tax Retirement Act of 1962 permits self-employed individuals to be treated as employees for purposes of participation in pension, profit-sharing, and annuity plans described in sections 401(a) and 403(a). In general, amounts received by a distributee or payee which are attributable to contributions made on behalf of a participant while he was self-employed are taxed in the same manner as amounts which are attributable to contributions made on behalf of a common-law employee. However, such amounts which are paid in one taxable year representing the total distributions payable to a distributee or payee with respect to an employee are not eligible for the capital gains treatment of section 402(a)(2) or 403(a)(2). This section sets forth the treatment of such distributions, except where such a distribution is subject to the penalties of section 72(m)(5) and paragraph (e) of § 1.72–17.

(b) *Distributions to which this section applies.* (1)(i) Except as provided in subparagraphs (2) and (3) of this paragraph, this section applies to amounts distributed to a distributee in one taxable year of the distributee in the case of an employees' trust described in section 401(a) which is exempt under section 501(a), or to amounts paid to a payee in one taxable year of the payee in the case of an annuity plan described in section 403(a), which constitute the total distributions payable, or the total amounts payable, to the distributee or payee with respect to an employee.

(ii) For the total distributions or amounts payable to a distributee or payee to be considered paid within one taxable year of the distributee or payee for purposes of this section, all amounts to the credit of the employee-participant through the end of such taxable year which are payable to the distributee or payee must be distributed or paid within such taxable year. Thus, the provisions of this section are not applicable to a distribution or payment to a distributee or payee if the trust or plan retains any amounts after the close of such taxable year which are payable to the same distributee or payee even though the amounts retained may be attributable to contributions on behalf of the employee-participant while he was a common-law employee in the business with respect to which the plan was established.

(iii) For purposes of this section, the total amounts payable to a distributee or the amounts to the credit of the employee do not include United States Retirement Plan Bonds held by a trust to the credit of the employee. Thus, a distribution to a distributee by a qualified trust may constitute a distribution to which this section applies even though the trust retains retirement plan bonds registered in the name of the employee on whose behalf the distribution is made which are to be distributed to the same distributee. Moreover, the proceeds of a retirement bond received as part of a distribution which constitutes the total distributions payable to the distributee are not entitled to the special tax treatment of this section. See section 405(d) and paragraph (a)(1) of §1.405–3.

(iv) If the amounts payable to a distributee from a qualified trust with respect to an employee-participant includes an annuity contract, such contract must be distributed along with all other amounts payable to the distributee in order to have a distribution to which this section applies. However, the proceeds of an annuity contract received in a total distribution will not be entitled to the tax treatment of this section unless the contract is surrendered in the taxable year of the distributee in which the total distribution was received.

(v) In the case of a qualified annuity plan, the term ''total amounts'' means all annuities payable to a payee. If more than one annuity contract is received under the plan by a distributee, this section shall not apply to an amount received on surrender of any such contracts unless all contracts under the plan payable to the payee are surrendered within one taxable year of the payee.

(vi)(*a*) The provisions of this section are applicable where the total amounts payable to a distributee or payee are paid within one taxable year of the distributee or payee whether or not a portion of the employee-participant's interest which is payable to another distributee or payee is paid within the same taxable year. However, a distributee or payee who, in prior taxable years received amounts (except amounts described in (*b*) of this subdivision) after the employee-participant ceases to be eligible for additional contributions to be made on his behalf, does not receive a distribution or payment to which this section applies, even though the total amount remaining to be paid to such distributee or payee with respect to such employee is paid within one taxable year. On the other hand, a distribution to a distributee or payee prior to the time that the employee-participant ceases to be eligible for additional contributions on his behalf does not preclude the application of this section to a later distribution to the same distributee or payee.

(*b*) The receipt of an amount which constitutes—

(*1*) A payment in the nature of a dividend or similar distribution to an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract, or

(*2*) A return of excess contributions which were not willfully made,

does not prevent the application of this section to a total distribution even though the amount is received after the employee-participant ceases to be eligible for additional contributions and in a taxable year other than the taxable year in which the total amount is received.

(vii) For purposes of this section, the total amounts payable to a distributee or payee, or the amounts to the credit of the employee, do not include any amounts which have been placed in a separate account for the funding of medical benefits described in section 401(h) as defined in paragraph (a) of §1.401–14. Thus, a distribution by a qualified trust or annuity plan may constitute a distribution to which this section applies even though amounts attributable to the funding of section 401(h) medical benefits as defined in paragraph (a) of §1.401–14 are not so distributed.

(2) This section shall apply—

(i) Only if the distribution or payment is made—

(*a*) On account of the employee's death at any time,

(*b*) After the employee has attained the age 59½ years, or

(*c*) After the employee has become disabled; and

(ii) Only to so much of the distribution or payment as is attributable to contributions made on behalf of an employee while he was a self-employed individual in the business with respect to which the plan was established. Any distribution or payment, or any portion thereof, which is not so attributable shall be subject to the rules of taxation which apply to any distribution or payment that is attributable to contributions on behalf of common-law employees.

For taxable years beginning after December 31, 1966, see section 72(m)(7) and paragraph (f) of §1.72–17 for the meaning of disabled. For taxable years beginning before January 1, 1967, see section 213(g)(3) for the meaning of disabled. For taxable years beginning after December 31, 1968, if this section is applicable by reason of the distribution or payment being made after the employee has become disabled, then for the taxable year in which the amounts to which this section applies are distributed or paid, there shall be submitted with the recipient's income tax return a doctor's statement as to the nature and effect of the employee's impairment.

(3) This section shall not apply to—

(i) Distributions or payments to which the penalty provisions of section 72(m)(5) and paragraph (e) of §1.72–17 apply,

(ii) Distributions or payments from a trust or plan made to or on behalf of an individual prior to the time such individual ceases to be eligible for additional contributions (except the contribution attributable to the last year of service) to be made to the trust or plan on his behalf as a self-employed individual, and

(iii) Distributions or payments made to the employee from a plan or trust unless contributions which were allowed as a deduction under section 404 have been made on behalf of such employee as a self-employed individual under such trust or plan for 5 or more taxable years (whether or not consecutive) prior to the taxable year in which such distributions or payments are made. Distributions or payments to which this section does not apply by reason of this subdivision are taxed as otherwise provided in section 72. However, for taxable years beginning before January 1, 1964, section 72(e)(3), as in effect before such date, is not applicable. For taxable years beginning after December 31, 1963, such distributions or payments may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

(4) The portion of any distribution or payment attributable to contributions on behalf of an employee-participant while he was self-employed includes the contributions made on his behalf while he was self-employed and the increments in value attributable to such contributions. Where the amounts to the credit of an employee-participant

include amounts attributable to contributions on his behalf while he was a self-employed individual and amounts attributable to contributions on his behalf while he was a common-law employee, the increment in value attributable to the employee-participant's interest shall be allocated to the contributions on his behalf while he was self-employed either by maintaining a separate account, or an accounting, which reflects the actual increment attributable to such contributions, or by the method described in paragraph (e)(1)(iv)(*c*) of §1.72–17. However, if the latter method is used, the numerator of the fraction is the total contributions made on behalf of the individual as a self-employed individual, weighted for the number of years that each contribution was in the plan.

(c) *Amounts includible in gross income.* (1) Where a total distribution or payment to which this section applies is made to one distributee or payee and includes the total amount remaining to the credit of the employee-participant on whose behalf the distribution or payment was made, the distributee or payee shall include in gross income an amount equal to the portion of the distribution or payment which exceeds the employee-participant's investment in the contract. For purposes of this paragraph, the investment in the contract shall be reduced by any amounts previously received from the plan or trust by or on behalf of the employee-participant which were excludable from gross income as a return of the investment in the contract.

(2) In the case of a distribution to which this section applies and which is made to more than one distributee or payee, each element of the amounts to the credit of an employee-participant shall be allocated among the several distributees or payees on the basis of the ratio of the value of the distributee's or payee's distribution or payment to the total amount to the credit of the employee-participant. The elements to be so allocated include the investment in the contract, the increments in value, and the portion of the amounts to the credit of the employee-participant which is attributable to the contributions on behalf of the employee-participant while he was a self-employed individual.

(d) *Computation of tax.* (1) The tax attributable to the amounts to which this section applies for the taxable year in which such amounts are received is the greater of—

(i) 5 times the increase in tax which would result from the inclusion in gross income of the recipient of 20 percent of so much of the amount so received as is includible in gross income, or

(ii) 5 times the increase which would result if the taxable income of the recipient for such taxable year equaled 20 percent of the excess of the aggregate of the amounts so received and includible in gross income over the amount of the deductions allowed the recipient for such taxable year under section 151 (relating to deduction for personal exemptions).

In any case in which the application of subdivision (ii) of this subparagraph results in an increase in taxable income for any taxable year, the resulting increase in taxes imposed by section 1 or 3 for such taxable year shall be reduced by the credit against tax provided by section 31 (tax withheld on wages), but shall not be reduced by any other credits against tax.

(2) The application of the rules of this paragraph may be illustrated by the following example:

*Example.* B, a sole proprietor and a calendar-year basis taxpayer, established a qualified pension trust to which he made annual contributions for 10 years of 10 percent of his earned income. B withdrew his entire interest in the trust during 1973, for which year, without regard to the distribution, he had a net operating loss and is allowed under section 151 a deduction for one personal exemption. At the time of the withdrawal, B was 64 years old. The amount of the distribution that is includible in his gross income is $25,750. Because of B's net operating loss, the tax attributable to the distribution is determined under the rule of subparagraph (1)(ii) of this paragraph. For purposes of determining the tax attributable to the $25,750, B's taxable income for 1973 is treated, under subparagraph (1)(ii) of this paragraph, as being 20 percent of $25,000 ($25,750 minus $750, the amount of the deduction allowed for each personal exemption under section 151 for 1973). Thus, under subparagraph (1) of this paragraph, the tax attributable to the $25,750 would be 5 times the increase which would result if the taxable income of B for the taxable year he received such amount equaled $5,000. B has had no amounts withheld from wages and thus is not entitled to reduce the increase in taxes by the credit against tax provided in section 31 and may not reduce the increase in taxes by any other credits against tax.

[T.D. 6676, 28 FR 10138, Sept. 17, 1963, as amended by T.D. 6722, 29 FR 5070, Apr. 14, 1964, T.D. 6885, 31 FR 7800, June 2, 1966, T.D. 6985, 33 FR 19812, Dec. 27, 1968; T.D. 7114, 36 FR 9018, May 18, 1971]

### § 1.72(e)–1T Treatment of distributions where substantially all contributions are employee contributions (temporary).

Q–1: How did the Tax Reform Act (TRA) of 1984 change the law with regard to the treatment of non-annuity distributions (*i.e.*, amounts distributed prior to the annuity starting date and not received as annuities) from a qualified plan that is treated as a single contract under section 72 and under which substantially all of the contributions are employee contributions?

A–1: (a) Prior to the amendment of section 72(e) by the TRA of 1984, non-annuity distributions from such a qualified plan generally were allocable, first, to nondeductible employee contributions and thus were not includible in gross income. After distributions equaled the balance of nondeductible employee contributions, further non-annuity distributions generally were includible in gross income.

(b) Pursuant to section 72(e)(7), as added by the TRA of 1984, non-annuity distributions from such a qualified plan that are allocable to investment in the plan after August 13, 1982 (as determined in accordance with section 72(e)(5)(B)), generally will be treated, first, as allocable to income and, second, as allocable to nondeductible employee contributions. Distributions allocable to income are includible in gross income. Distributions allocable to nondeductible employee contributions are not includible in gross income.

Q–2: To which qualified plans and contracts does section 72(e)(7) apply?

A–2: Section 72(e)(7) applies to any plan or contract under which substantially all of the contributions are employee contributions if—

(a) Such plan is described in section 401(a) and the related trust or trusts are exempt from tax under section 501(a); or

(b) Such contract is—

(1) Purchased by a trust described in (a) above,

(2) Purchased as part of a plan described in section 403(a), or

(3) Described in section 403(b).

Q–3: What is the definition of a qualified plan or contract under which substantially all of the contributions are employee contributions?

A–3: (a) A qualified plan or contract under which substantially all of the contributions are employee contributions is a plan or contract with respect to which 85 percent or more of the total contributions during the "representative period" are employee contributions. The "representative period" means the five-plan-year period preceding the plan year during which a distribution occurs. However, if less than 85 percent of the total contributions for all plan years during which the plan or contract is in existence prior to the plan year of distribution are employee contributions, then the plan or contract is not one with respect to which substantially all of the contributions are employee contributions.

(b) For purposes of the 85 percent test, contributions made to a predecessor plan or contract are aggregated with contributions made to the plan or contract to which the 85 percent test is being applied (the successor plan or contract). For purposes of the preceding sentence, a predecessor plan or contract is a plan or contract the terms of which are substantially the same as the successor plan or contract.

Q–4: What is the definition of employee contributions for purposes of section 72(e)(7)?

A–4: For purposes of section 72(e)(7), employee contributions are those amounts contributed by the employee and those amounts considered contributed by the employee under section 72(f). For example, amounts contributed to a section 401(k) qualified cash or deferred arrangement, pursuant to an employee's election to defer such amounts, are employer contributions to the extent that such amounts are not currently includible in gross income. In addition, deductible employee contributions under section 72(o) are disregarded in their entirety (*i.e.*, treated as neither employee contributions nor employer contributions) in determining whether substantially all the contributions are employee contributions.

Q–5: How is the 85 percent test of section 72(e)(7) applied to a qualified plan or contract?

A–5: (a) Except as provided in paragraphs (b), (c), and (d), the 85 percent test is applied separately with respect to each contract under section 72.

(b) If a single qualified plan described in section 401(a) or section 403(a) comprises more than one contract under section 72, regardless of whether such plan includes multiple trusts or combinations of profit-sharing and pension features, these contracts are aggregated for purposes of applying the 85 percent test. Thus, if substantially all of the contributions under a qualified plan comprising two contracts under section 72 are employee contributions, section 72(e)(5)(D) shall not apply to non-annuity distributions under either of the contracts.

(c) With respect to the plans maintained by the Federal Government or by instrumentalities of the Federal Government, the 85 percent test shall be applied by aggregating all such plans. This aggregation rule applies only to those plans that are actively administered by the Federal Government or an instrumentality thereof. Thus, if a plan of the Federal Government is administered by a commercial financial institution, it would not be aggregated with other plans of the Federal Government and its instrumentalities for purposes of applying the 85 percent test.

(d) In the case of a contract described in section 403(b), the 85 percent test is applied separately to each such contract.

Q–6: Is a loan from a qualified plan or contract described in section 72(e)(7) treated as a distribution under section 72(e)(4)(A)?

A–6: Yes. Pursuant to section 72(e)(4)(A), if an employee receives, either directly or indirectly, any amount as a loan from a qualified plan or contract described in section 72(e)(7), such amount shall be treated as a distribution from the plan or contract of an amount not received as an annuity. Similarly, if an employee assigns or pledges, or agrees to assign or pledge, any portion of the value of any qualified plan or contract, such portion shall be treated as a distribution from the plan or contract of an amount not received as an annuity.

Q–7: Does the five percent penalty for premature distributions from annuity contracts, as described in section 72(q), apply to distributions from a qualified plan or contract described in section 72(e)(7)?

A–7: No.

Q–8: When is section 72(e)(7) effective?

A–8: Section 72(e)(7) is effective for amounts received or loans made on or after October 17, 1984. For purposes of this effective date provision, loan amounts outstanding on October 16, 1984, which are renegotiated, extended, renewed, or revised after that date generally are treated as loans made on the date of the renegotiation, etc.

[T.D. 8073, 51 FR 4314, Feb. 4, 1986; 51 FR 7262, Mar. 3, 1986]

### § 1.72(p)–1 Loans treated as distributions.

The questions and answers in this section provide guidance under section 72(p) pertaining to loans from qualified employer plans (including government plans and tax-sheltered annuities and employer plans that were formerly qualified). The examples included in the questions and answers in this section are based on the assumption that a bona fide loan is made to a participant from a qualified defined contribution plan pursuant to an enforceable agreement (in accordance with paragraph (b) of Q&A–3 of this section), with adequate security and with an interest rate and repayment terms that are commercially reasonable. (The particular interest rate used, which is solely for illustration, is 8.75 percent compounded annually.) In addition, unless the contrary is specified, it is assumed in the examples that the amount of the loan does not exceed 50 percent of the participant's nonforfeitable account balance, the participant has no other outstanding loan (and had no prior loan) from the plan or any other plan maintained by the participant's employer or any other person required to be aggregated with the employer under section 414(b), (c) or (m), and the loan is not excluded from section 72(p) as a loan made in the ordinary course of an investment program as described in Q&A–18 of this section. The regulations and examples in this section do not provide guidance on whether a loan from a plan would result in a prohibited transaction under section 4975 of the Internal Revenue Code or on whether a loan from a plan covered by title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829) (ERISA) would be consistent with the fiduciary standards of ERISA or would result in a prohibited transaction under section 406 of ERISA. The questions and answers are as follows:

Q–1: In general, what does section 72(p) provide with respect to loans from a qualified employer plan?

A–1: (a) *Loans*. Under section 72(p), an amount received by a participant or beneficiary as a loan from a qualified employer plan is treated as having been received as a distribution from the plan (a deemed distribution), unless the loan satisfies the requirements of Q&A–3 of this section. For purposes of section 72(p) and this section, a loan made from a contract that has been purchased under a qualified employer plan (including a contract that has been distributed to the participant or beneficiary) is considered a loan made under a qualified employer plan.

(b) *Pledges and assignments*. Under section 72(p), if a participant or beneficiary assigns or pledges (or agrees to assign or pledge) any portion of his or her interest in a qualified employer plan as security for a loan, the portion of the individual's interest assigned or pledged (or subject to an agreement to assign or pledge) is treated as a loan from the plan to the individual, with the result that such portion is subject to the deemed distribution rule described in paragraph (a) of this Q&A–1. For purposes of section 72(p) and this section, any assignment or pledge of (or agreement to assign or to pledge) any portion of a participant's or beneficiary's interest in a contract that has been purchased under a qualified employer plan (including a contract that has been distributed to the participant or beneficiary) is considered an assignment or pledge of (or agreement to assign or pledge) an interest in a qualified employer plan. However, if all or a portion of a participant's or beneficiary's interest in a qualified employer plan is pledged or assigned as security for a loan from the plan to the participant or the beneficiary, only the amount of the loan received by the participant or the beneficiary, not the amount pledged or assigned, is treated as a loan.

Q–2: What is a qualified employer plan for purposes of section 72(p)?

A–2: For purposes of section 72(p) and this section, a qualified employer plan means—

(a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a);

(b) An annuity plan described in section 403(a);

(c) A plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b);

(d) Any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of the United States, a State or a political subdivision of a State; or

(e) Any plan which was (or was determined to be) described in paragraph (a), (b), (c), or (d) of this Q&A–2.

Q–3: What requirements must be satisfied in order for a loan to a participant or beneficiary from a qualified employer plan not to be a deemed distribution?

A–3: (a) *In general*. A loan to a participant or beneficiary from a qualified employer plan will not be a deemed distribution to the participant or beneficiary if the loan satisfies the repayment term requirement of section 72(p)(2)(B), the level amortization requirement of section 72(p)(2)(C), and the enforceable agreement requirement of paragraph (b) of this Q&A–3, but only to the extent the loan satisfies the amount limitations of section 72(p)(2)(A).

(b) *Enforceable agreement requirement.* A loan does not satisfy the requirements of this paragraph unless the loan is evidenced by a legally enforceable agreement (which may include more than one document) and the terms of the agreement demonstrate compliance with the requirements of section 72(p)(2) and this section. Thus, the agreement must specify the amount and date of the loan and the repayment schedule. The agreement does not have to be signed if the agreement is enforceable under applicable law without being signed. The agreement must be set forth either—

(1) In a written paper document; or

(2) In a document that is delivered through an electronic medium under an electronic system that satisfies the requirements of §1.401(a)–21 of this chapter.

Q–4: If a loan from a qualified employer plan to a participant or beneficiary fails to satisfy the requirements of Q&A–3 of this section, when does a deemed distribution occur?

A–4: (a) *Deemed distribution.* For purposes of section 72, a deemed distribution occurs at the first time that the requirements of Q&A–3 of this section are not satisfied, in form or in operation. This may occur at the time the loan is made or at a later date. If the terms of the loan do not require repayments that satisfy the repayment term requirement of section 72(p)(2)(B) or the level amortization requirement of section 72(p)(2)(C), or the loan is not evidenced by an enforceable agreement satisfying the requirements of paragraph (b) of Q&A–3 of this section, the entire amount of the loan is a deemed distribution under section 72(p) at the time the loan is made. If the loan satisfies the requirements of Q&A–3 of this section except that the amount loaned exceeds the limitations of section 72(p)(2)(A), the amount of the loan in excess of the applicable limitation is a deemed distribution under section 72(p) at the time the loan is made. If the loan initially satisfies the requirements of section 72(p)(2)(A), (B) and (C) and the enforceable agreement requirement of paragraph (b) of Q&A–3 of this section, but payments are not made in accordance with the terms applicable to the loan, a deemed distribution occurs as a result of the failure to make such payments. See Q&A–10 of this section regarding when such a deemed distribution occurs and the amount thereof and Q&A–11 of this section regarding the tax treatment of a deemed distribution.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q&A–4 and are based upon the assumptions described in the introductory text of this section:

*Example 1.* (i) A participant has a nonforfeitable account balance of $200,000 and receives $70,000 as a loan repayable in level quarterly installments over five years.

(ii) Under section 72(p), the participant has a deemed distribution of $20,000 (the excess of $70,000 over $50,000) at the time of the loan, because the loan exceeds the $50,000 limit in section 72(p)(2)(A)(i). The remaining $50,000 is not a deemed distribution.

*Example 2.* (i) A participant with a nonforfeitable account balance of $30,000 borrows $20,000 as a loan repayable in level monthly installments over five years.

(ii) Because the amount of the loan is $5,000 more than 50% of the participant's nonforfeitable account balance, the participant has a deemed distribution of $5,000 at the time of the loan. The remaining $15,000 is not a deemed distribution. (Note also that, if the loan is secured solely by the participant's account balance, the loan may be a prohibited transaction under section 4975 because the loan may not satisfy 29 CFR 2550.408b–1(f)(2).)

*Example 3.* (i) The nonforfeitable account balance of a participant is $100,000 and a $50,000 loan is made to the participant repayable in level quarterly installments over seven years. The loan is not eligible for the section 72(p)(2)(B)(ii) exception for loans used to acquire certain dwelling units.

(ii) Because the repayment period exceeds the maximum five-year period in section 72(p)(2)(B)(i), the participant has a deemed distribution of $50,000 at the time the loan is made.

*Example 4.* (i) On August 1, 2002, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over five years in level monthly installments due at the end of each month. After making monthly payments through July 2003, the participant fails to make any of the payments due thereafter.

(ii) As a result of the failure to satisfy the requirement that the loan be repaid in level monthly installments, the participant has a deemed distribution. See paragraph (c) of Q&A–10 of this section regarding when such a deemed distribution occurs and the amount thereof.

Q–5: What is a principal residence for purposes of the exception in section 72(p)(2)(B)(ii) from the requirement that a loan be repaid in five years?

A–5: Section 72(p)(2)(B)(ii) provides that the requirement in section 72(p)(2)(B)(i) that a plan loan be repaid within five years does not apply to a loan used to acquire a dwelling unit which will within a reasonable time be used as the principal residence of the participant (a principal residence plan loan). For this purpose, a principal residence has the same meaning as a principal residence under section 121.

Q–6: In order to satisfy the requirements for a principal residence plan loan, is a loan required to be secured by the dwelling unit that will within a reasonable time be used as the principal residence of the participant?

A–6: A loan is not required to be secured by the dwelling unit that will within a reasonable time be used as the participant's principal residence in order to satisfy the requirements for a principal residence plan loan.

Q–7: What tracing rules apply in determining whether a loan qualifies as a principal residence plan loan?

A–7: The tracing rules established under section 163(h)(3)(B) apply in determining whether a loan is treated as for the acquisition of a principal residence in order to qualify as a principal residence plan loan.

Q–8: Can a refinancing qualify as a principal residence plan loan?

A–8: (a) *Refinancings.* In general, no, a refinancing cannot qualify as a principal residence plan loan. However, a loan from a qualified employer plan used to repay a loan from a third party will qualify as a principal residence plan loan if the plan loan qualifies as a principal residence plan loan without regard to the loan from the third party.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A–8 and is based upon the assumptions described in the introductory text of this section:

*Example.* (i) On July 1, 2003, a participant requests a $50,000 plan loan to be repaid in level monthly installments over 15 years. On August 1, 2003, the participant acquires a principal residence and pays a portion of the purchase price with a $50,000 bank loan. On September 1, 2003, the plan loans $50,000 to the participant, which the participant uses to pay the bank loan.

(ii) Because the plan loan satisfies the requirements to qualify as a principal residence plan loan (taking into account the tracing rules of section 163(h)(3)(B)), the plan loan qualifies for the exception in section 72(p)(2)(B)(ii).

Q–9: Does the level amortization requirement of section 72(p)(2)(C) apply when a participant is on a leave of absence without pay?

A–9: (a) *Leave of absence.* The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u) and paragraph (b) of this Q&A–9), that a participant is on a *bona fide* leave of absence, either without pay from the employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. However, the loan (including interest that accrues during the leave of absence) must be repaid by the latest permissible term of the loan and the amount of the installments due after the leave ends must not be less than the amount required under the terms of the original loan.

(b) *Military service.* In accordance with section 414(u)(4), if a plan suspends the obligation to repay a loan made to an employee from the plan for any part of a period during which the employee is performing service in the uniformed services (as defined in 38 U.S.C. chapter 43), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p) or this section. Thus, if a plan suspends loan repayments for any part of a period during which the employee is performing military service described in the preceding sentence, such suspension shall not cause the loan to be deemed distributed even if the suspension exceeds one year and even if the term of the loan is extended. However, the loan will not satisfy the repayment term requirement of section 72(p)(2)(B) and the level amortization requirement of section 72(p)(2)(C) unless loan repayments resume upon the completion of such period of military service and the loan is repaid thereafter by amortization in substantially level installments over a period that ends not later than the latest permissible term of the loan.

(c) *Latest permissible term of a loan.* For purposes of this Q&A–9, the latest permissible term of a loan is the latest date permitted under section 72(p)(2)(B) (*i.e.*, five years from the date of the loan, assuming that the replacement loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans) plus any additional period of suspension permitted under paragraph (b) of this Q&A–9.

(d) *Examples.* The following examples illustrate the rules of this Q&A–9 and are based upon the assumptions described in the introductory text of this section:

*Example 1.* (i) On July 1, 2003, a participant with a nonforfeitable account balance of $80,000 borrows $40,000 to be repaid in level monthly installments of $825 each over 5 years. The loan is not a principal residence plan loan. The participant makes 9 monthly payments and commences an unpaid leave of absence that lasts for 12 months. The participant was not performing military service during this period. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid. The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2008.

(ii) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2008 repaid the full balance remaining due.

*Example 2.* (i) The facts are the same as in *Example 1*, except the participant was on leave of absence performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for two years and the rate of interest charged during this period of military service is reduced to 6 percent compounded annually under 50 App. section 526 (relating to the Soldiers' and Sailors' Civil Relief Act Amendments of 1942). After the military service ends on April 2, 2006, the participant resumes active employment on April 19, 2006, continues the monthly installments of $825 thereafter, and on June 30, 2010, repays the full balance remaining due ($6,487).

(ii) Because the loan satisfies the requirements of section 72(p)(2) and paragraph (b) of this Q&A–9, the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would also be satisfied if the amount of each monthly installment after April 19, 2006, is increased to $930 in order to repay the loan by June 30, 2010 (without any balance remaining due then).

Q–10: If a participant fails to make the installment payments required under the terms of a loan that satisfied the requirements of Q&A–3 of this section when made, when does a deemed distribution occur and what is the amount of the deemed distribution?

A–10: (a) *Timing of deemed distribution.* Failure to make any installment payment when due in accordance with the terms of the loan violates section 72(p)(2)(C) and, accordingly, results in a deemed distribution at the time of such failure. However, the plan administrator may allow a cure period and section 72(p)(2)(C) will not be considered to have been violated if the installment payment is made not later than the end of the cure period, which period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.

(b) *Amount of deemed distribution.* If a loan satisfies Q&A–3 of this section when made, but there is a failure to pay the installment payments required under the terms of the loan (taking into account any cure period allowed under paragraph (a) of this Q&A–10), then the amount of the deemed distribution equals the entire outstanding balance of the loan (including accrued interest) at the time of such failure.

(c) *Example.* The following example illustrates the rules in paragraphs (a) and (b) of this Q&A–10 and is based upon the assumptions described in the introductory text of this section:

*Example.* (i) On August 1, 2002, a participant has a nonforfeitable account balance of $45,000 and borrows $20,000 from a plan to be repaid over 5 years in level monthly installments due at the end of each month. After making all monthly payments due through July 31, 2003, the participant fails to make the payment due on August 31, 2003 or any other monthly payments due thereafter. The plan administrator allows a three-month cure period.

(ii) As a result of the failure to satisfy the requirement that the loan be repaid in level installments pursuant to section 72(p)(2)(C), the participant has a deemed distribution on November 30, 2003, which is the last day of the three-month cure period for the August 31, 2003 installment. The amount of the deemed distribution is $17,157, which is the outstanding balance on the loan at November 30, 2003. Alternatively, if the plan administrator had allowed a cure period through the end of the next calendar quarter, there would be a deemed distribution on December 31, 2003 equal to $17,282, which is the outstanding balance of the loan at December 31, 2003.

Q–11: Does section 72 apply to a deemed distribution as if it were an actual distribution?

A–11: (a) *Tax basis.* If the employee's account includes after-tax contributions or other investment in the contract under section 72(e), section 72 applies to a deemed distribution as if it were an actual distribution, with the result that all or a portion of the deemed distribution may not be taxable.

(b) *Section 72(t) and (m).* Section 72(t) (which imposes a 10 percent tax on certain early distributions) and section 72(m)(5) (which imposes a separate 10 percent tax on certain amounts received by a 5-percent owner) apply to a deemed distribution under section 72(p) in the same manner as if the deemed distribution were an actual distribution.

Q–12: Is a deemed distribution under section 72(p) treated as an actual distribution for purposes of the qualification requirements of section 401, the distribution provisions of section 402, the distribution restrictions of section 401(k)(2)(B) or 403(b)(11), or the vesting requirements of §1.411(a)–7(d)(5) (which affects the application of a graded vesting schedule in cases involving a prior distribution)?

A–12: No; thus, for example, if a participant in a money purchase plan who is an active employee has a deemed distribution under section 72(p), the plan will not be considered to have made an in-service distribution to the participant in violation of the qualification requirements applicable to money purchase plans. Similarly, the deemed distribution is not eligible to be rolled over to an eligible retirement plan and is not considered an impermissible distribution of an amount attributable to elective contributions in a section 401(k) plan. See also §1.402(c)–2, Q&A–4(d) and §1.401(k)–1(d)(5)(iii).

Q–13: How does a reduction (offset) of an account balance in order to repay a plan loan differ from a deemed distribution?

A–13: (a) *Difference between deemed distribution and plan loan offset amount.* (1) Loans to a participant from a qualified employer plan can give rise to two types of taxable distributions—

(i) A deemed distribution pursuant to section 72(p); and

(ii) A distribution of an offset amount.

(2) As described in Q&A–4 of this section, a deemed distribution occurs when the requirements of Q&A–3 of this section are not satisfied, either when the loan is made or at a later time. A deemed distribution is treated as a distribution to the participant or beneficiary only for certain tax purposes and is not a distribution of the accrued benefit. A distribution of a plan loan offset amount (as defined in §1.402(c)–2, Q&A–9(b)) occurs when, under the terms governing a plan loan, the accrued benefit of the participant or beneficiary is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in the accrued benefit). A distribution of a plan loan offset amount could occur in a variety of circumstances, such as where the terms governing the plan loan require that, in the event of the participant's request for a distribution, a loan be repaid immediately or treated as in default.

(b) *Plan loan offset.* In the event of a plan loan offset, the amount of the account balance that is offset against the loan is an actual distribution for purposes of the Internal Revenue Code, not a deemed distribution under section 72(p). Accordingly, a plan may be prohibited from making such an offset under the provisions of section 401(a), 401(k)(2)(B) or 403(b)(11) prohibiting or limiting distributions to an active employee. See §1.402(c)–2, Q&A–9(c), *Example 6.* See also Q&A–19 of this section for rules regarding the treatment of a loan after a deemed distribution.

Q–14: How is the amount includible in income as a result of a deemed distribution under section 72(p) required to be reported?

A–14: The amount includible in income as a result of a deemed distribution under section 72(p) is required to be reported on Form 1099–R (or any other form prescribed by the Commissioner).

Q–15: What withholding rules apply to plan loans?

A–15: To the extent that a loan, when made, is a deemed distribution or an account balance is reduced (offset) to repay a loan, the amount includible in income is subject to withholding. If a deemed distribution of a loan or a loan repayment by benefit offset results in income at a date after the date the loan is made, withholding is required only if a transfer of cash or property (excluding employer securities) is made to the participant or beneficiary from the plan at the same time. See §§35.3405–1, f–4, and 31.3405(c)–1, Q&A–9 and Q&A–11, of this chapter for further guidance on withholding rules.

Q–16: If a loan fails to satisfy the requirements of Q&A–3 of this section and is a prohibited transaction under section 4975, is the deemed distribution of the loan under section 72(p) a correction of the prohibited transaction?

A–16: No, a deemed distribution is not a correction of a prohibited transaction under section 4975. See §§141.4975–13 and 53.4941(e)–1(c)(1) of this chapter for guidance concerning correction of a prohibited transaction.

Q–17: What are the income tax consequences if an amount is transferred from a qualified employer plan to a participant or beneficiary as a loan, but there is an express or tacit understanding that the loan will not be repaid?

A–17: If there is an express or tacit understanding that the loan will not be repaid or, for any reason, the transaction does not create a debtor-creditor relationship or is otherwise not a bona fide loan, then the amount transferred is treated as an actual distribution from the plan for purposes of the Internal Revenue Code, and is not treated as a loan or as a deemed distribution under section 72(p).

Q–18: If a qualified employer plan maintains a program to invest in residential mortgages, are loans made pursuant to the investment program subject to section 72(p)?

A–18: (a) Residential mortgage loans made by a plan in the ordinary course of an investment program are not subject to section 72(p) if the property acquired with the loans is the primary security for such loans and the amount loaned does not exceed the fair market value of the property. An investment program exists only if the plan has established, in advance of a specific investment under the program, that a certain percentage or amount of plan assets will be invested in residential mortgages available to persons purchasing the property who satisfy commercially customary financial criteria. A loan will not be considered as made under an investment program if—

(1) Any of the loans made under the program matures upon a participant's termination from employment;

(2) Any of the loans made under the program is an earmarked asset of a participant's or beneficiary's individual account in the plan; or

(3) The loans made under the program are made available only to participants or beneficiaries in the plan.

(b) Paragraph (a)(3) of this Q&A–18 shall not apply to a plan which, on December 20, 1995, and at all times thereafter, has had in effect a loan program under which, but for paragraph (a)(3) of this Q&A–18, the loans comply with the conditions of paragraph (a) of this Q&A–18 to constitute residential mortgage loans in the ordinary course of an investment program.

(c) No loan that benefits an officer, director, or owner of the employer maintaining the plan, or their beneficiaries, will be treated as made under an investment program.

(d) This section does not provide guidance on whether a residential mortgage loan made under a plan's investment program would result in a prohibited transaction under section 4975, or on whether such a loan made by a plan covered by title I of ERISA would be consistent with the fiduciary standards of ERISA or would result in a prohibited transaction under section 406 of ERISA. See 29 CFR 2550.408b–1.

Q–19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes and what effect does the deemed distribution have on subsequent loans?

A–19: (a) *General rule.* Except as provided in paragraph (b) of this Q&A–19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded for purposes of applying section 72 to the participant or the beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A–19), this additional interest is not treated as an additional loan (and thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. *See* Q&A–11 through Q&A–16 of this section.

(b) *Effect on subsequent loans*—(1) *Application of section 72(p)(2)(A).* A loan that is deemed distributed under section 72(p) (including interest accruing thereafter) and that has not been repaid (such as by a plan loan offset) is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

(2) *Additional security for subsequent loans.* If a loan is deemed distributed to a participant or beneficiary under section 72(p) and has not been repaid (such as by a plan loan offset), then no payment made thereafter to the participant or beneficiary is treated as a loan for purposes of section 72(p)(2) unless the loan otherwise satisfies section 72(p)(2) and this section and either of the following conditions is satisfied:

(i) There is an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding. For this purpose, an arrangement will not fail to be enforceable merely because a party has the right to revoke the arrangement prospectively.

(ii) The plan receives adequate security from the participant or beneficiary that is in addition to the participant's or beneficiary's accrued benefit under the plan.

(3) *Condition no longer satisfied.* If, following a deemed distribution that has not been repaid, a payment is made to a participant or beneficiary that satisfies the conditions in paragraph (b)(2) of this Q&A–19 for treatment as a plan loan and, subsequently, before repayment of the second loan, the conditions in paragraph (b)(2) of this Q&A–19 are no longer satisfied with respect to the second loan (for example, if the loan recipient revokes consent to payroll withholding), the amount then outstanding on the second loan is treated as a deemed distribution under section 72(p).

Q–20: May a participant refinance an outstanding loan or have more than one loan outstanding from a plan?

A–20: (a) *Refinancings and multiple loans*—(1) *General rule.* A participant who has an outstanding loan that satisfies section 72(p)(2) and this section may refinance that loan or borrow additional amounts if, under the facts and circumstances, the loans collectively satisfy the amount limitations of section 72(p)(2)(A) and the prior loan and the additional loan each satisfy the requirements of section 72(p)(2)(B) and (C) and this section. For this purpose, a refinancing includes any situation in which one loan replaces another loan.

(2) *Loans that repay a prior loan and have a later repayment date.* For purposes of section 72(p)(2) and this section (including the amount limitations of section 72(p)(2)(A)), if a loan that satisfies section 72(p)(2) is replaced by a loan (a replacement loan) and the term of the replacement loan ends after the latest permissible term of the loan it replaces (the replaced loan), then the replacement loan and the replaced loan are both treated as outstanding on the date of the transaction. For purposes of the preceding sentence, the latest permissible term of the replaced loan is the latest date permitted under section 72(p)(2)(C) (*i.e.*, five years from the original date of the

replaced loan, assuming that the replaced loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans and that no additional period of suspension applied to the replaced loan under Q&A–9 (b) of this section). Thus, for example, if the term of the replacement loan ends after the latest permissible term of the replaced loan and the sum of the amount of the replacement loan plus the outstanding balance of all other loans on the date of the transaction, including the replaced loan, fails to satisfy the amount limitations of section 72(p)(2)(A), then the replacement loan results in a deemed distribution. This paragraph (a)(2) does not apply to a replacement loan if the terms of the replacement loan would satisfy section 72(p)(2) and this section determined as if the replacement loan consisted of two separate loans, the replaced loan (amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replaced loan) and, to the extent the amount of the replacement loan exceeds the amount of the replaced loan, a new loan that is also amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replacement loan.

(b) *Examples*. The following examples illustrate the rules of this Q&A–20 and are based on the assumptions described in the introductory text of this section:

*Example 1*. (i) A participant with a vested account balance that exceeds $100,000 borrows $40,000 from a plan on January 1, 2005, to be repaid in 20 quarterly installments of $2,491 each. Thus, the term of the loan ends on December 31, 2009. On January 1, 2006, when the outstanding balance on the loan is $33,322, the loan is refinanced and is replaced by a new $40,000 loan from the plan to be repaid in 20 quarterly installments. Under the terms of the refinanced loan, the loan is to be repaid in level quarterly installments (of $2,491 each) over the next 20 quarters. Thus, the term of the new loan ends on December 31, 2010.

(ii) Under section 72(p)(2)(A), the amount of the new loan, when added to the outstanding balance of all other loans from the plan, must not exceed $50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on December 31, 2005, over the outstanding balance of loans from the plan on January 1, 2006, with such outstanding balance to be determined immediately prior to the new $40,000 loan. Because the term of the new loan ends later than the term of the loan it replaces, under paragraph (a)(2) of this Q&A–20, both the new loan and the loan it replaces must be taken into account for purposes of applying section 72(p)(2), including the amount limitations in section 72(p)(2)(A). The amount of the new loan is $40,000, the outstanding balance on January 1, 2006, of the loan it replaces is $33,322, and the highest outstanding balance of loans from the plan during 2005 was $40,000. Accordingly, under section 72(p)(2)(A), the sum of the new loan and the outstanding balance on January 1, 2006, of the loan it replaces must not exceed $50,000 reduced by $6,678 (the excess of the $40,000 maximum outstanding loan balance during 2005 over the $33,322 outstanding balance on January 1, 2006, determined immediately prior to the new loan) and, thus, must not exceed $43,322. The sum of the new loan ($40,000) and the outstanding balance on January 1, 2006, of the loan it replaces ($33,322) is $73,322. Since $73,322 exceeds the $43,322 limit under section 72(p)(2)(A) by $30,000, there is a deemed distribution of $30,000 on January 1, 2006.

(iii) However, no deemed distribution would occur if, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan were equal to $2,907, which is the sum of the $2,491 originally scheduled quarterly installment payment amount under the first loan, plus $416 (which is the amount required to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the excess of the refinanced loan over the January 1, 2006, balance of the first loan ($40,000 minus $33,322 equals $6,678)), and the amount of the 4 remaining installments was equal to $416. The refinancing would not be subject to paragraph (a)(2) of this Q&A–20 because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan) and the other of which is in the additional amount ($6,678) borrowed under the new loan. Similarly, the transaction also would not result in a deemed distribution (and would not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the refinanced loan provided for repayments to be made in level quarterly installments (of $2,990 each) over the next 16 quarters.

*Example 2*. (i) The facts are the same as in *Example 1*(i), except that the applicable interest rate used by the plan when the loan is refinanced is significantly lower due to a reduction in market rates of interest and, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan is equal to $2,848 and the amount of the next 4 installments on the refinanced loan is equal to $406. The $2,848 amount is the sum of $2,442 to repay the first loan by December 31, 2009 (the term of the first loan), plus $406 (which is the amount to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the $6,678 excess of the refinanced loan over the January 1, 2006, balance of the first loan).

(ii) The transaction does not result in a deemed distribution (and is not subject to paragraph (a)(2) of this Q&A–20) because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan), and the other of which is in the additional amount ($6,678) borrowed under the new loan. The transaction would also not result in a deemed distribution (and not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the new loan provided for repayments to be made in level quarterly installments (of $2,931 each) over the next 16 quarters.

Q–21: Is a participant's tax basis under the plan increased if the participant repays the loan after a deemed distribution?

A–21: (a) *Repayments after deemed distribution.* Yes, if the participant or beneficiary repays the loan after a deemed distribution of the loan under section 72(p), then, for purposes of section 72(e), the participant's or beneficiary's investment in the contract (tax basis) under the plan increases by the amount of the cash repayments that the participant or beneficiary makes on the loan after the deemed distribution. However, loan repayments are not treated as after-tax contributions for other purposes, including sections 401(m) and 415(c)(2)(B).

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A–21 and is based on the assumptions described in the introductory text of this section:

*Example.* (i) A participant receives a $20,000 loan on January 1, 2003, to be repaid in 20 quarterly installments of $1,245 each. On December 31, 2003, the outstanding loan balance ($19,179) is deemed distributed as a result of a failure to make quarterly installment payments that were due on September 30, 2003 and December 31, 2003. On June 30, 2004, the participant repays $5,147 (which is the sum of the three installment payments that were due on September 30, 2003, December 31, 2003, and March 31, 2004, with interest thereon to June 30, 2004, plus the installment payment due on June 30, 2004). Thereafter, the participant resumes making the installment payments of $1,245 from September 30, 2004 through December 31, 2007. The loan repayments made after December 31, 2003 through December 31, 2007 total $22,577.

(ii) Because the participant repaid $22,577 after the deemed distribution that occurred on December 31, 2003, the participant has investment in the contract (tax basis) equal to $22,577 (14 payments of $1,245 each plus a single payment of $5,147) as of December 31, 2007.

Q–22: When is the effective date of section 72(p) and the regulations in this section?

A–22: (a) *Statutory effective date.* Section 72(p) generally applies to assignments, pledges, and loans made after August 13, 1982.

(b) *Regulatory effective date.* This section applies to assignments, pledges, and loans made on or after January 1, 2002.

(c) *Loans made before the regulatory effective date*—(1) *General rule.* A plan is permitted to apply Q&A–19 and Q&A–21 of this section to a loan made before the regulatory effective date in paragraph (b) of this Q&A–22 (and after the statutory effective date in paragraph (a) of this Q&A–22) if there has not been any deemed distribution of the loan before the transition date or if the conditions of paragraph (c)(2) of this Q&A–22 are satisfied with respect to the loan.

(2) *Consistency transition rule for certain loans deemed distributed before the regulatory effective date.* (i) The rules in this paragraph (c)(2) of this Q&A–22 apply to a loan made before the regulatory effective date in paragraph (b) of this Q&A–22 (and after the statutory effective date in paragraph (a) of this Q&A–22) if there has been any deemed distribution of the loan before the transition date.

(ii) The plan is permitted to apply Q&A–19 and Q&A–21 of this section to the loan beginning on any January 1, but only if the plan reported, in Box 1 of Form 1099–R, for a taxable year no later than the latest taxable year that would be permitted under this section (if this section had been in effect for all loans made after the statutory effective date in paragraph (a) of this Q&A–22), a gross distribution of an amount at least equal to the initial default amount. For purposes of this section, the initial default amount is the amount that would be reported as a gross distribution under Q&A–4 and Q&A–10 of this section and the transition date is the January 1 on which a plan begins applying Q&A–19 and Q&A–21 of this section to a loan.

(iii) If a plan applies Q&A–19 and Q&A–21 of this section to such a loan, then the plan, in its reporting and withholding on or after the transition date, must not attribute investment in the contract (tax basis) to the participant or beneficiary based upon the initial default amount.

(iv) This paragraph (c)(2)(iv) of this Q&A–22 applies if—

(A) The plan attributed investment in the contract (tax basis) to the participant or beneficiary based on the deemed distribution of the loan;

(B) The plan subsequently made an actual distribution to the participant or beneficiary before the transition date; and

(C) Immediately before the transition date, the initial default amount (or, if less, the amount of the investment in the contract so attributed) exceeds the participant's or beneficiary's investment in the contract (tax basis). If this paragraph (c)(2)(iv) of this Q&A–22 applies, the plan must treat the excess (the loan transition amount) as a loan amount that remains outstanding and must include the excess in the participant's or beneficiary's income at the time of the first actual distribution made on or after the transition date.

(3) *Examples*. The rules in paragraph (c)(2) of this Q&A–22 are illustrated by the following examples, which are based on the assumptions described in the introductory text of this section (and, except as specifically provided in the examples, also assume that no distributions are made to the participant and that the participant has no investment in the contract with respect to the plan). *Example 1*, *Example 2*, and *Example 4* of this paragraph (c)(3) of this Q&A–22 illustrate the application of the rules in paragraph (c)(2) of this Q&A–22 to a plan that, before the transition date, did not treat interest accruing after the initial deemed distribution as resulting in additional deemed distributions under section 72(p). Example 3 of this paragraph (c)(3) of this Q&A–22 illustrates the application of the rules in paragraph (c)(2) of this Q&A–22 to a plan that, before the transition date, treated interest accruing after the initial deemed distribution as resulting in additional deemed distributions under section 72(p). The examples are as follows:

*Example 1*. (i) In 1998, when a participant's account balance under a plan is $50,000, the participant receives a loan from the plan. The participant makes the required repayments until 1999 when there is a deemed distribution of $20,000 as a result of a failure to repay the loan. For 1999, as a result of the deemed distribution, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $20,000 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of this Q&A–22) and, in Box 2 of Form 1099–R, a taxable amount of $20,000. The plan then records an increase in the participant's tax basis for the same amount ($20,000). Thereafter, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1999 deemed distribution. Thus, as of December 31, 2001, the total taxable amount reported by the plan as a result of the deemed distribution is $20,000 and the plan's records show that the participant's tax basis is the same amount ($20,000). As of January 1, 2002, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is zero. Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(ii) For the year 2003, the plan must report a gross distribution of $60,000 in Box 1 of Form 1099–R and a taxable amount of $60,000 in Box 2 of Form 1099–R.

*Example 2*. (i) The facts are the same as in *Example 1*, except that in 1999, immediately prior to the deemed distribution, the participant's account balance under the plan totals

$50,000 and the participant's tax basis is $10,000. For 1999, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $20,000 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of this Q&A–22) and reports, in Box 2 of Form 1099–R, a taxable amount of $16,000 (the $20,000 deemed distribution minus $4,000 of tax basis ($10,000 times ($20,000/$50,000)) allocated to the deemed distribution). The plan then records an increase in tax basis equal to the $20,000 deemed distribution, so that the participant's remaining tax basis as of December 31, 1999, totals $26,000 ($10,000 minus $4,000 plus $20,000). Thereafter, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1999 deemed distribution. Thus, as of December 31, 2001, the total taxable amount reported by the plan as a result of the deemed distribution is $16,000 and the plan's records show that the participant's tax basis is $26,000. As of January 1, 2002, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is $6,000. Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(ii) For the year 2003, the plan must report a gross distribution of $60,000 in Box 1 of Form 1099–R and a taxable amount of $54,000 in Box 2 of Form 1099–R.

*Example 3.* (i) In 1993, when a participant's account balance in a plan is $100,000, the participant receives a loan of $50,000 from the plan. The participant makes the required loan repayments until 1995 when there is a deemed distribution of $28,919 as a result of a failure to repay the loan. For 1995, as a result of the deemed distribution, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $28,919 (which is the initial default amount in accordance with paragraph (c)(2)(ii) of this Q&A–22) and, in Box 2 of Form 1099–R, a taxable amount of $28,919. For 1995, the plan also records an increase in the participant's tax basis for the same amount ($28,919). Each year thereafter through 2001, the plan reports a gross distribution equal to the interest accruing that year on the loan balance, reports a taxable amount equal to the interest accruing that year on the loan balance reduced by the participant's tax basis allocated to the gross distribution, and records a net increase in the participant's tax basis equal to that taxable amount. As of December 31, 2001, the taxable amount reported by the plan as a result of the loan totals $44,329 and the plan's records for purposes of section 72 show that the participant's tax basis totals the same amount ($44,329). As of January 1, 2002, the plan decides to apply Q&A–19 of this section. Accordingly, it reduces the participant's tax basis by the initial default amount of $28,919, so that the participant's remaining tax basis in the plan is $15,410 ($44,329 minus $28,919). Thereafter, the amount of the outstanding loan is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $180,000 in cash and the loan receivable equal to the $28,919 outstanding loan amount in 1995 plus interest accrued thereafter to the payment date in 2003. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $180,000 in cash.

(ii) For the year 2003, the plan must report a gross distribution of $180,000 in Box 1 of Form 1099–R and a taxable amount of $164,590 in Box 2 of Form 1099–R ($180,000 minus the remaining tax basis of $15,410).

*Example 4.* (i) The facts are the same as in Example 1, except that in 2000, after the deemed distribution, the participant receives a $10,000 hardship distribution. At the time of the hardship distribution, the participant's account balance under the plan totals $50,000. For 2000, the plan reports, in Box 1 of Form 1099–R, a gross distribution of $10,000 and, in Box 2 of Form 1099–R, a taxable amount of $6,000 (the $10,000 actual distribution minus $4,000 of tax basis ($10,000 times ($20,000/$50,000)) allocated to this actual distribution). The plan then records a decrease in tax basis equal to $4,000, so that the participant's remaining tax basis as of December 31, 2000, totals $16,000 ($20,000 minus $4,000). After 1999, the plan disregards, for purposes of section 72, the interest that accrues on the loan after the 1999 deemed distribution. Thus, as of December 31, 2001, the total taxable amount reported by the plan as a result of the deemed distribution plus the 2000 actual distribution is $26,000 and the plan's records show that the participant's tax basis is $16,000. As of January 1, 2002, the plan decides to apply Q&A–19 of this section to the loan. Accordingly, it reduces the participant's tax basis by the initial default amount of $20,000, so that the participant's remaining tax basis in the plan is reduced from $16,000 to zero. However, because the $20,000 initial default amount exceeds $16,000, the plan records a loan transition amount of $4,000 ($20,000 minus $16,000). Thereafter, the amount of the outstanding loan, other than the $4,000 loan transition amount, is not treated as part of the account balance for purposes of section 72. The participant attains age 59½ in the year 2003 and receives a distribution of the full account balance under the plan consisting of $60,000 in cash and the loan receivable. At that time, the plan's records reflect an offset of the loan amount against the loan receivable in the participant's account and a distribution of $60,000 in cash.

(ii) In accordance with paragraph (c)(2)(iv) of this Q&A–22, the plan must report in Box 1 of Form 1099–R a gross distribution of $64,000 and in Box 2 of Form 1099–R a taxable amount for the participant for the year 2003 equal to $64,000 (the sum of the $60,000 paid in the year 2003 plus $4,000 as the loan transition amount).

(d) *Effective date for Q&A–19(b)(2) and Q&A–20*. Q&A–19(b)(2) and Q&A–20 of this section apply to assignments, pledges, and loans made on or after January 1, 2004.

[T.D. 8894, 65 FR 46591, July 31, 2000, as amended by T.D. 9021, 67 FR 71824, Dec. 3, 2002; 68 FR 9532, 9535, Feb. 28, 2003; T.D. 9169, 69 FR 78153, Dec. 29, 2004; T.D. 9294, 71 FR 61883, Oct. 20, 2006]

### § 1.73–1 Services of child.

(a) Compensation for personal services of a child shall, regardless of the provisions of State law relating to who is entitled to the earnings of the child, and regardless of whether the income is in fact received by the child, be deemed to be the gross income of the child and not the gross income of the parent of the child. Such compensation, therefore, shall be included in the gross income of the child and shall be reflected in the return rendered by or for such child. The income of a minor child is not required to be included in the gross income of the parent for income tax purposes. For requirements for making the return by such child, or for such child by his guardian, or other person charged with the care of his person or property, see section 6012.

(b) In the determination of taxable income or adjusted gross income, as the case may be, all expenditures made by the parent or the child attributable to amounts which are includible in the gross income of the child and not of the parent solely by reason of section 73 are deemed to have been paid or incurred by the child. In such determination, the child is entitled to take deductions not only for expenditures made on his behalf by his parent which would be commonly considered as business expenses, but also for other expenditures such as charitable contributions made by the parent in the name of the child and out of the child's earnings.

(c) For purposes of section 73, the term ''parent'' includes any individual who is entitled to the services of the child by reason of having parental rights and duties in respect of the child. See section 6201(c) and the regulations in Part 301 of this chapter (Procedure and Administration) for assessment of tax against the parent in certain cases.

### § 1.74–1 Prizes and awards.

(a) *Inclusion in gross income*. (1) Section 74(a) requires the inclusion in gross income of all amounts received as prizes and awards, unless such prizes or awards qualify as an exclusion from gross income under subsection (b), or unless such prize or award is a scholarship or fellowship grant excluded from gross income by section 117. Prizes and awards which are includible in gross income include (but are not limited to) amounts received from radio and television giveaway shows, door prizes, and awards in contests of all types, as well as any prizes and awards from an employer to an employee in recognition of some achievement in connection with his employment.

(2) If the prize or award is not made in money but is made in goods or services, the fair market value of the goods or services is the amount to be included in income.

(b) *Exclusion from gross income*. Section 74(b) provides an exclusion from gross income of any amount received as a prize or award, if (1) such prize or award was made primarily in recognition of past achievements of the recipient in religious, charitable, scientific, educational, artistic, literary, or civic fields; (2) the recipient was selected without any action on his part to enter the contest or proceedings; and (3) the recipient is not required to render substantial future services as a condition to receiving the prize or award. Thus, such awards as the Nobel prize and the Pulitzer prize would qualify for the exclusion. Section 74(b) does not exclude prizes or awards from an employer to an employee in recognition of some achievement in connection with his employment.

(c) *Scholarships and fellowship grants.* See section 117 and the regulations thereunder for provisions relating to scholarships and fellowship grants.

**§ 1.75–1 Treatment of bond premiums in case of dealers in tax-exempt securities.**

(a) *In general.* (1) Section 75 requires certain adjustments to be made by dealers in securities with respect to premiums paid on municipal bonds which are held for sale to customers in the ordinary course of the trade or business. The adjustments depend upon the method of accounting used by the taxpayer in computing the gross income from the trade or business. See paragraphs (b) and (c) of this section.

(2) The term ''municipal bond'' under section 75 means any obligation issued by a government or political subdivision thereof if the interest on the obligation is excludable from gross income under section 103. However, such term does not include an obligation—

(i) If the earliest maturity or call date of the obligation is more than 5 years from the date of acquisition by the taxpayer or the obligation is sold or otherwise disposed of by the taxpayer within 30 days after the date of acquisition by him, and

(ii) If, in case of an obligation acquired after December 31, 1957, the amount realized upon its sale (or, in the case of any other disposition, its fair market value at the time of disposition) is higher than its adjusted basis.

For purposes of this subparagraph, the amount realized on the sale of the obligation, or the fair market value of the obligation, shall not include any amount attributable to interest, and the adjusted basis shall be computed without regard to any adjustment for amortization of bond premium required under section 75 and section 1016(a)(6). For purposes of determining whether the obligation is sold or otherwise disposed of by the taxpayer within 30 days after the date of its acquisition by him, it is immaterial whether or not such 30-day period is entirely within one taxable year.

(3) The term ''cost of securities sold'' means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of the inventory value of the opening inventory for such year and the cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(b) *Inventories not valued at cost.* (1) In the case of a dealer in securities who computes gross income from his trade or business by the use of inventories and values such inventories on any basis other than cost, the adjustment required by section 75 is, except as provided in subparagraph (2) of this paragraph, the reduction of ''cost of securities sold'' by the amount equal to the amortizable bond premium which would be disallowed as a deduction under section 171(a)(2) with respect to the municipal bond if the dealer were an ordinary investor holding such bond. Such amortizable bond premium is computed under section 171(b) by reference to the cost or other original basis of the bond on the date of acquisition (determined without regard to section 1013, relating to inventory value on a subsequent date).

(2) With respect to an obligation acquired after December 31, 1957, which has as its earliest maturity or call date a date more than five years from the date on which it was acquired by the taxpayer, the following rules shall apply:

(i) If the taxpayer holds the obligation at the end of the taxable year, he is not required by section 75 to reduce the ''cost of securities sold'' for such year with respect to the obligation.

(ii) If the taxpayer sells or otherwise disposes of the obligation during the taxable year, he shall reduce the ''cost of securities sold'' for the taxable year of the sale or disposition unless he sold the obligation for more than its adjusted basis or otherwise disposed of it when its fair market value was more than its adjusted basis. For purposes of determining whether or not the taxpayer sold the obligation for more than its adjusted basis, or otherwise disposed of it when its fair market value was more than its adjusted basis, the amount realized on the sale of the obligation, or the fair market value of the obligation, shall not include any amount attributable to interest, and the adjusted basis shall be computed without regard to any adjustment for amortization of bond premium required under sections 75 and 1016(a)(6). The amount of the reduction referred to in the first sentence of this subdivision is the total amount by which the adjusted basis of the obligation would be required to be reduced under section 1016(a)(5) were the obligation subject to the amortizable bond premium provisions of section 171; that is, the amount of the amortizable bond premium attributable to the period during which the obligation was held which would be disallowed as a deduction under section 171(a)(2) if the taxpayer were an ordinary investor.

(3) This paragraph may be illustrated by the following examples:

*Example 1.* X, a dealer in securities who values his inventories on a basis other than cost, makes his income tax returns on the calendar year basis. On July 1, 1954, he bought, for $1,060 each, three municipal bonds (A, B, an C) having a face obligation of $1,000, and maturing on July 1, 1959. Bond A is sold on December 31, 1954, bond B is sold on December 31, 1955, and bond C is sold on June 30, 1956. For each bond the amortizable bond premium to maturity is $60, the period from date of acquisition to maturity is 60 months, and the amortizable bond premium per month is $1. The adjustment for each of the years 1954, 1955, and 1956 is as follows:

| Bond | Date acquired | Date sold | Adjustment to "cost of securities sold" for— | | |
|---|---|---|---|---|---|
| | | | 1954 | 1955 | 1956 |
| A | July 1, 1954 | Dec. 31, 1954 | $6 | | |
| B | July 1, 1954 | Dec. 31, 1955 | 6 | $12 | |
| C | July 1, 1954 | Jun. 30, 1956 | 6 | 12 | $6 |
| Total | | | 18 | 24 | 6 |

*Example 2.* Y is a dealer in securities who values his inventories on a basis other than cost. He makes his income tax returns on the calendar year basis. On January 1, 1958, Y bought five bonds (D, E, F, G, and H) issued by various municipalities. Each bond has a face obligation of $1,000 and was purchased for $1,060. The interest on each is excludable from gross income under section 103. Bonds D, E, and F mature on December 31, 1962, and bonds G and H mature on December 31, 1967. The amortizable bond premium per month is $1 with respect to bonds D, E, and F, and is $.50 with respect to bonds G and H. The following table indicates the reduction in "cost of securities sold" which Y should make for the years shown, assuming that he sells the bonds on the dates and for the prices set forth:

| Bond | Date sold | Sale price | Adjustment to "cost of securities sold" for— | | |
|---|---|---|---|---|---|
| | | | 1958 | 1959 | 1960 |
| D | Feb. 1, 1959 | $1,090 | $12 | $1 | |
| E | Jan. 30, 1958 | 1,100 | None | | |
| F | Jan. 30, 1958 | 1,000 | 1 | | |
| G | Dec. 31, 1960 | 1,065 | None | None | None |
| H | Dec. 31, 1960 | 1,050 | None | None | $18 |
| Total | | .............. | 13 | 1 | 18 |

An adjustment to "cost of securities sold" must be made with respect to bond D (even though it was ultimately sold at a gain) because the bond neither had an earliest maturity or call date of more than 5 years from the date on which Y acquired it, nor was it disposed of within 30 days after such date. An adjustment must be made for the years 1958 and 1959 since section 75(a)(1) requires that an adjustment be made with respect to such a bond at the close of each taxable year in which it is held. On the other hand, since bonds E, F, G, and H either were disposed of within 30 days after the date of such acquisition or had an earliest maturity or call date more than 5 years from the date of acquisition, and were acquired after December 31, 1957, it is necessary to determine whether Y disposed of them at a loss so as to require an adjustment under section 75. No adjustment is necessary with respect to bonds E and G because they were sold at a gain. An adjustment to "cost of securities sold" is required with respect to bonds F and H because they were sold at a loss. As in the case of bond D, an adjustment with respect to bond F is made in 1958 in accordance with section 75(a)(1); however, the adjustment with respect to bond H is made entirely in 1960, the taxable year in which Y sold that bond, in accordance with the last sentence of section 75(a). If Y had acquired bonds before January 1, 1958, it would be unnecessary to determine whether they were disposed of at a loss since that factor is significant only with respect to bonds acquired on or after that date.

(c) *Inventories not used or inventories valued at cost.* (1) In the case of a dealer in securities who computes gross income from his trade or business without the use of inventories or by use of inventories valued at cost, the adjustment required by section 75 is a reduction of the adjusted basis of each municipal bond sold or otherwise disposed of during the taxable year. The amount of such reduction is the total amount by which the adjusted basis of the bond would be required to be reduced under section 1016(a)(5) were the bond subject to the amortizable bond premium provisions of section 171; that is, the amount of the amortizable bond premium attributable to the period during which the bond was held which would be disallowed as a deduction under section 171(a)(2) if the taxpayer were an ordinary investor.

(2) Subparagraph (1) of this paragraph may be illustrated by the following example:

*Example.* Z, a dealer in securities who values his inventories on the basis of cost, makes his income tax returns on the calendar year basis. On January 1, 1954, he buys, for $1,060 each, three municipal bonds (I, J, and K) having a face obligation of $1,000, and maturing on January 1, 1959. Bond I is sold on December 31, 1954, bond J is sold on June 30, 1955, and bond K is sold on December 31, 1956. For each bond, the amortizable bond premium to maturity is $60, the period from the date of acquisition to maturity is 60 months, and the amortizable bond premium per month is $1.

| Bond | Date acquired | Date sold | Adjustment for— | | |
|---|---|---|---|---|---|
| | | | 1954 | 1955 | 1956 |
| I | Jan. 1, 1954 | Dec. 31,1954 | $12 | | |
| J | Jan. 1,1954 | June 30,1955 | None | $18 | |
| K | Jan. 1,1954 | Dec. 31,1956 | None | None | $36 |

(d) *Bonds acquired before July 1, 1950.* Under section 203(c) of the Revenue Act of 1950, adjustment is required for a municipal bond acquired before July 1, 1950, only with respect to taxable years beginning on or after that date. Accordingly, if the municipal bond was acquired before July 1, 1950, then for purposes of section 75 the amortizable bond premium under section 171 must be computed after adjusting the bond premium to the extent proper to reflect unamortized bond premium for so much of the holding period (as determined under section 1223) as precedes the taxable year of the dealer beginning on or after July 1, 1950. Thus, in example (1) of paragraph (b) and in the example in paragraph (c) of this section, the first taxable year beginning on or after July 1, 1950, is, for each dealer, the taxable year beginning January 1, 1951. If each dealer had purchased for $1,060 on April 1, 1950, a municipal bond having a face obligation of $1,000 and maturing April 1, 1955, and had sold such bond on February 28, 1955, the adjustment under section 75 would be computed as follows:

| | Dealer *X* | Dealer *Z* |
|---|---|---|
| Bond premium | $60 | $60 |
| Adjustment for holding period prior to Jan. 1, 1951 | 9 | 9 |
| Amortizable bond premium to maturity, as adjusted | 51 | 51 |
| Amortizable bond premium per month | 1 | 1 |
| Total adjustments under sec. (o), 1939 Code, for years 1951–53 | 36 | None |
| Adjustment under sec. 75 for 1954 | 12 | None |
| Adjustment under sec. 75 for 1955 | 2 | 50 |

[T.D. 6647, 28 FR 3519, Apr. 11, 1963]

**§ 1.77–1 Election to consider Commodity Credit Corporation loans as income.**

A taxpayer who receives a loan from the Commodity Credit Corporation may, at his election, include the amount of such loan in his gross income for the taxable year in which the loan is received. If a taxpayer makes such an election (or has made such an election under section 123 of the Internal Revenue Code of 1939 or under section 223(d) of the Revenue Act of 1939 (53 Stat. 897)), then for subsequent taxable years he shall include in his gross income all amounts received during those years as loans from the Commodity Credit Corporation, unless he secures the permission of the Commissioner to change to a different method of accounting. Application for permission to change such method of accounting and the basis upon which the return is made shall be filed with the Commission of Internal Revenue, Washington, D.C. 20224, within 90 days after the beginning of the taxable year to be covered by the return.

**§ 1.77–2 Effect of election to consider commodity credit loans as income.**

(a) If a taxpayer elects or has elected under section 77, section 123 of the Internal Revenue Code of 1939, or section 223(d) of the Revenue Act of 1939 (53 Stat. 897), as amended, to include in his gross income the amount of a loan from the Commodity Credit Corporation for the taxable year in which it is received, then—

(1) No part of the amount realized by the Commodity Credit Corporation upon the sale or other disposition of the commodity pledged for such loan shall be recognized as income to the taxpayer, unless the taxpayer receives an amount in addition to that advanced to him as the loan, in which event such additional amount shall be included in the gross income of the taxpayer for the taxable year in which it is received, and

(2) No deductible loss to the taxpayer shall be recognized on account of any deficiency realized by the Commodity Credit Corporation on such loan if the taxpayer was relieved from liability for such deficiency.

(b) The application of paragraph (a) of this section may be illustrated by the following example:

*Example.* A, a taxpayer who elected for his taxable year 1952 to include in gross income amounts received as loans from the Commodity Credit Corporation, received as loans $500 in 1952, $700 in 1953, and $900 in 1954. In 1956 all the pledged commodity was sold by the Commodity Credit Corporation for an amount $100 and $200 less than the loans with respect to the commodity pledged in 1952 and 1953, respectively, and for an amount $150 greater than the loan with respect to the commodity pledged in 1954. A, in making his return for 1956, shall include in gross income the sum of $150 if it is received during that year, but will not be allowed a deduction for the deficiencies of $100 and $200 unless he is required to satisfy such deficiencies and does satisfy them during that year.

**§ 1.78–1 Dividends received from certain foreign corporations by certain domestic corporations choosing the foreign tax credit.**

(a) *Taxes deemed paid by certain domestic corporations treated as a section 78 dividend.* Any reduction under section 907(a) of the foreign income taxes deemed to be paid with respect to foreign oil and gas extraction income does not affect the amount treated as a section 78 dividend. If a domestic corporation chooses to have the benefits of the foreign tax credit under section 901 for any taxable year, an amount which is equal to the foreign income taxes deemed to be paid by such corporation for such year under section 902(a) in accordance with §§ 1.902–1 and 1.902–2 and § 1.902(b)(2), or under section 960(a)(1) in accordance with § 1.960–7, shall, to the extent provided by this section, be treated as a dividend (hereinafter referred to as a section 78 dividend) received by such domestic corporation from the foreign corporation described in section 902(a) in accordance with §§ 1.902–1 and 1.902–2 or section 960(c)(1) in accordance with § 1.960–7, as the case may be. A section 78 dividend shall be treated as a dividend for all purposes of the Code, except that it shall not be treated as a dividend under section 245, relating to dividends received from certain foreign corporations, or increase the earnings and profits of the domestic corporation. For purposes of determining the source of a section 78 dividend in computing the limitation on the foreign tax credit under section 904, see § 1.902(h)(1) and the regulations under section 960. For special rules relating to the determination of the foreign tax credit under section 902 with respect to certain minimum distributions received from controlled foreign corporations and the effect of such rules upon the gross-up under section 78, see paragraph (c) of § 1.963–4. For rules respecting the reduction of foreign income taxes under section 6038(b) in applying section 902(a) in accordance with §§ 1.902–1 and 1.902–2 or section 960(c)(1) in accordance with § 1.960–7, where there has been a failure to furnish certain information and for an illustration of the effect of such reduction upon the amount of a section 78 dividend, see paragraph (l) of § 1.6038–2.

(b) *Certain taxes not treated as a section 78 dividend.* Foreign income taxes deemed paid by a domestic corporation under section 902(a) in accordance with §§ 1.902–1 and 1.902–2 or section 960(c)(1) in accordance with § 1.960–7, shall not, to the extent provided by paragraph (b) of § 1.960–3, be treated as a section 78 dividend where such taxes are imposed on certain distributions from the earnings and profits of a controlled foreign corporation attributable to an amount which is, or has been, included in gross income of the domestic corporation under section 951.

(c) *United Kingdom income tax included in gross income under treaty.* Any amount of United Kingdom income tax appropriate to a dividend paid by a corporation which is a resident of the United Kingdom shall not be treated as a section 78 dividend by a domestic corporation to the extent that such tax is included in the gross income of such domestic corporation in accordance with Article XIII (1) of the income tax convention between the United States and the United Kingdom, as amended by Article II of the supplementary protocol between such Governments signed on August 19, 1957 (9 UST 1331). See § 507.117 of this chapter, relating to credit against United States tax liability for income tax paid or deemed to have been paid to the United Kingdom.

(d) *Taxable year in which section 78 dividend is received.* A section 78 dividend shall be considered received in the taxable year of a domestic corporation in which—

(1) The corporation receives the dividend by reason of which there are deemed paid under section 902(a) in accordance with §§ 1.902–1 and 1.902–2 the foreign income taxes which give rise to such section 78 dividend, or

(2) The corporation includes in gross income under section 951(a) the amounts by reason of which there are deemed paid under section 960(a)(1) in accordance with § 1.960–7 the foreign income taxes which give rise to such section 78 dividend, notwithstanding that such foreign income taxes may be carried back or carried over to another taxable year under section 904(d) and are deemed to be paid or accrued in such other taxable year.

(e) *Effective dates for the application of section 78*—(1) *In general.* This section shall apply to amounts of foreign income taxes deemed paid under section 902(a) in accordance with §§ 1.902–1 and 1.902–2, or under section 960(a)(1) in accordance with § 1.960–7, by reason of a distribution received by a domestic corporation—

(i) After December 31, 1964, or

(ii) Before January 1, 1965, in a taxable year of such domestic corporation beginning after December 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year of such foreign corporation beginning after December 31, 1962.

For special rules relating to determination of accumulated profits for such purposes, see the regulation under section 902.

(2) *Amounts under section 951 treated as distributions.* For purposes of this paragraph, any amount attributable to the earnings and profits for the taxable year of a first-tier corporation (as defined in paragraph (b)(1) of § 1.960–1) which is included in the gross income of a domestic corporation under section 951(a) shall be treated as a distribution received by such domestic corporation on the last day in such taxable year on which such first-tier corporation is a controlled foreign corporation.

(f) *Illustrations.* The application of this section may be illustrated by the examples provided in § 1.902–1, § 1.904–5, § 1.960–3, § 1.960–4, and § 1.963–4.

[T.D. 6805, 30 FR 3208, Mar. 9, 1965, as amended by T.D. 7120, 36 FR 10859, June 4, 1971; 36 FR 11924, June 23, 1971; T.D. 7481, 42 FR 20130, Apr. 18, 1977; T.D. 7490; 42 FR 30497, June 15, 1977; 42 FR 32536, June 27, 1977; T.D. 7649, 44 FR 60086, Oct. 18, 1979; T.D. 7961, 49 FR 26225, June 27, 1984]

### § 1.79–0 Group-term life insurance—definitions of certain terms.

The following definitions apply for purposes of section 79, this section, and §§ 1.79–1, 1.79–2, and 1.79–3.

*Carried directly or indirectly.* A policy of life insurance is ''carried directly or indirectly'' by an employer if—

(a) The employer pays any part of the cost of the life insurance directly or through another person; or

(b) The employer or two or more employers arrange for payment of the cost of the life insurance by their employees and charge at least one employee less than the cost of his or her insurance, as determined under Table I of § 1.79–3(d)(2), and at least one other employee more than the cost of his or her insurance, determined in the same way.

*Employee.* An ''employee'' is—

(a) A person who performs services if his or her relationship to the person for whom services are performed is the legal relationship of employer and employee described in § 31.3401(c)–1; or

(b) A full-time life insurance salesperson described in section 7701(a)(20); or

(c) A person who formerly performed services as an employee.

A person who formerly performed services as an employee and currently performs services for the same employer as an independent contractor is considered an employee only with respect to insurance provided because of the person's former services as an employee.

*Group of employees.* A ''group of employees'' is all employees of an employer, or less than all employees if membership in the group is determined solely on the basis of age, marital status, or factors related to employment. Examples of factors related to employment are membership in a union some or all of whose members are employed by the employer, duties performed, compensation received, and length of service. Ordinarily the purchase of something other than group-term life insurance is not a factor related to employment. For example, if an employer provides credit life insurance to all employees who purchase automobiles, these employees are not a ''group of employees'' because membership is not determined solely on the basis of age, marital status, or factors related to employment. On the other hand, participation in an employer's pension, profit-sharing or accident and health plan is considered a factor related to employment even if employees are required to contribute to the cost of the plan. Ownership of stock in the employer corporation is not a factor related to employment. However, participation in an employer's stock bonus plan may be a factor related to employment and a ''group of employees'' may include employees who own stock in the employer corporation.

*Permanent benefit.* A ''permanent benefit'' is an economic value extending beyond one policy year (for example, a paid-up or cash surrender value) that is provided under a life insurance policy. However, the following features are not permanent benefits:

(a) A right to convert (or continue) life insurance after group life insurance coverage terminates;

(b) Any other feature that provides no economic benefit (other than current insurance protection) to the employee; or

(c) A feature under which term life insurance is provided at a level premium for a period of five years or less.

*Policy.* The term ''policy'' includes two or more obligations of an insurer (or its affiliates) that are sold in conjunction. Obligations that are offered or available to members of a group of employees are sold in conjunction if they are offered or available because of the employment relationship. The actuarial sufficiency of the premium charged for each obligation is not taken into account in determining whether the obligations are sold in conjunction. In addition, obligations may be sold in conjunction even if the obligations are contained in separate documents, each document is filed with and approved by the applicable state insurance commission, or each obligation is independent of any other obligation. Thus, a group of individual contracts under which life insurance is provided to a group of employees may be a policy. Similarly, two benefits provided to a group of employees, one term life insurance and the other a permanent benefit, may be a policy, even if one of the benefits is provided only to employees who decline the other benefit. However, an employer may elect to treat two or more obligations each of which provides no permanent benefits as separate policies if the premiums are properly allocated among such policies. An employer also may elect to treat an obligation which provides permanent benefits as a separate policy if—

(a) The insurer sells the obligation directly to the employee who pays the full cost thereof;

(b) The participation of the employer with respect to sales of the obligation to employees is limited to selection of the insurer and the type of coverage and to sales assistance activities such as providing employee lists to the insurer, permitting the insurer to use the employer's premises for solicitation, and collecting premiums through payroll deduction;

(c) The insurer sells the obligation on the same terms and in substantial amounts to individuals who do not purchase (and whose employers do not purchase) any other obligation from the insurer; and

(d) No employer-provided benefit is conditioned on purchase of the obligation.

[T.D. 7623, 44 FR 28797, May 17, 1979, as amended by T.D. 7917, 48 FR 45762, Oct. 7, 1983]

### § 1.79–1 Group-term life insurance—general rules.

(a) *What is group-term life insurance?* Life insurance is not group-term life insurance for purposes of section 79 unless it meets the following conditions:

(1) It provides a general death benefit that is excludable from gross income under section 101(a).

(2) It is provided to a group of employees.

(3) It is provided under a policy carried directly or indirectly by the employer.

(4) The amount of insurance provided to each employee is computed under a formula that precludes individual selection. This formula must be based on factors such as age, years of service, compensation, or position. This condition may be satisfied even if the amount of insurance provided is determined under a limited number of alternative schedules that are based on the amount each employee elects to contribute. However, the amount of insurance provided under each schedule must be computed under a formula that precludes individual selection.

(b) *May group-term life insurance be combined with other benefits?* No part of the life insurance provided under a policy that provides a permanent benefit is group-term life insurance unless—

(1) The policy or the employer designates in writing the part of the death benefit provided to each employee that is group-term life insurance; and

(2) The part of the death benefit that is provided to an employee and designated as the group-term life insurance benefit for any policy year is not less than the difference between the total death benefit provided under the policy and the employee's deemed death benefit (DDB) at the end of the policy year determined under paragraph (d)(3) of this section.

(c) *May a group include fewer than 10 employees?* (1) As a general rule, life insurance provided to a group of employees cannot qualify as group-term life insurance for purposes of section 79 unless, at some time during the calendar year, it is provided to at least 10 full-time employees who are members of the group of employees. For purposes of this rule, all life insurance provided under policies carried directly or indirectly by the employer is taken into account in determining the number of employees to whom life insurance is provided.

(2) The general rule of paragraph (c)(1) of this section does not apply if the following conditions are met:

(i) The insurance is provided to all full-time employees of the employer or, if evidence of insurability affects eligibility, to all full-time employees who provide evidence of insurability satisfactory to the insurer.

(ii) The amount of insurance provided is computed either as a uniform percentage of compensation or on the basis of coverage brackets established by the insurer. However, the amount computed under either method may be reduced in the case of employees who do not provide evidence of insurability satisfactory to the insurer. In general, no bracket may exceed 2½ times the next lower bracket and the lowest bracket must be at least 10 percent of the highest bracket. However, the insurer may establish a separate schedule of coverage brackets for employees who are over age 65, but no bracket in the over-65 schedule may exceed 2½ times the next lower bracket and the lowest bracket in the over-65 schedule must be at least 10 percent of the highest bracket in the basic schedule.

(iii) Evidence of insurability affecting employee's eligibility for insurance or the amount of insurance provided to that employee is limited to a medical questionnaire completed by the employee that does not require a physical examination.

(3) The general rule of paragraph (c)(1) of this section does not apply if the following conditions are met:

(i) The insurance is provided under a common plan to the employees of two or more unrelated employers.

(ii) The insurance is restricted to, but mandatory for, all employees of the employer who belong to or are represented by an organization (such as a union) that carries on substantial activities in addition to obtaining insurance.

(iii) Evidence of insurability does not affect an employee's eligibility for insurance or the amount of insurance provided to that employee.

(4) For purposes of paragraph (c) (2) and (3) of this section, employees are not taken into account if they are denied insurance for the following reasons:

(i) They are not eligible for insurance under the terms of the policy because they have not been employed for a waiting period, specified in the policy, which does not exceed six months.

(ii) They are part-time employees. Employees whose customary employment is for not more than 20 hours in any week, or 5 months in any calendar year, are presumed to be part-time employees.

(iii) They have reached the age of 65.

(5) For purposes of paragraph (c) (1) and (2) of this section, insurance is considered to be provided to an employee who elects not to receive insurance unless, in order to receive the insurance, the employee is required to contribute to the cost of benefits other than term life insurance. Thus, if an employee could receive term life insurance by contributing to its cost, the employee is taken into account in determining whether the insurance is provided to 10 or more employees even if such employee elects not to receive the insurance. However, an employee who must contribute to the cost of permanent benefits to obtain term life insurance is not taken into account in determining whether the term life insurance is provided to 10 or more employees unless the term life insurance is actually provided to such employee.

(d) *How much must an employee receiving permanent benefits include in income?*—(1) *In general.* If an insurance policy that meets the requirements of this section provides permanent benefits to an employee, the cost of the permanent benefits reduced by the amount paid for permanent benefits by the employee is included in the employee's income. The cost of the permanent benefits is determined under the formula in paragraph (d)(2) of this section.

(2) *Formula for determining cost of the permanent benefits.* In each policy year the cost of the permanent benefits for any particular employee must be no less than:

$$X(DDB_2 - DDB_1)$$

where

$DDB_2$ is the employee's deemed death benefit at the end of the policy year:

$DDB_1$ is the employee's deemed death benefit at the end of the preceding policy year; and

$X$ is the net single premium for insurance (the premium for one dollar of paid-up whole-life insurance) at the employee's attained age at the beginning of the policy year.

(3) *Formula for determining deemed death benefit.* The deemed death benefit

(DDB) at the end of any policy year for any particular employee is equal to—

R/Y

Where—

R is the net level premium reserve at the end of that policy year for all benefits provided to the employee by the policy or, if greater, the fair market value of the policy at the end of that policy year; and

Y is the net single premium for insurance (the premium for one dollar of paid-up, whole life insurance) at the employee's age at the end of that policy year.

(4) *Mortality tables and interest rates used.* For purposes of paragraph (d) (2) and (3) of this section, the net level premium reserve ($R$) and the net single premium ($X$ or $Y$) shall be based on the 1958 CSO Mortality Table and 4 percent interest.

(5) *Dividends.* If an insurance policy that meets the requirements of this section provides permanent benefits, part or all of the dividends under the policy may be includible in the employee's income. If the employee pays nothing for the permanent benefits, all dividends under the policy that are actually or constructively received by the employee are includible in the employee's income. In all other cases, the amount of dividends included in the employee's income is equal to:

$(D+C)-(PI+DI+AP)$

where

$D$ is the total amount of dividends actually or constructively received under the policy by the employee in the current and all preceding taxable years of the employee;

$C$ is the total cost of the permanent benefits for the current and all preceding taxable years of the employee determined under the formulas in paragraph (d) (2) and (6) of this section:

$PI$ is the total amount of premium included in the employee's income under paragraph (d)(1) of this section for the current and all preceding taxable years of the employee;

$DI$ is the total amount of dividends included in the employee's income under this paragraph (d)(5) in all preceding taxable years of the employee; and

$AP$ is the total amount paid for permanent benefits by the employee in the current and all preceding taxable years of the employee.

(6) *Different policy and taxable years.* (i) If a policy year begins in one employee taxable year and ends in another employee taxable year, the cost of the permanent benefits, determined under the formula in paragraph (d)(2) of this section, is allocated between the employee taxable years.

(ii) The cost of permanent benefits for a policy year is allocated first to the employee taxable year in which the policy year begins. The cost of permanent benefits allocated to that policy year is equal to:

$F \times C$

where

$F$ is the fraction of the premium for that policy year that is paid on or before the last day of the employee taxable year; and

$C$ is the cost of permanent benefits for the policy year determined under the formula in paragraph (d)(2) of this section.

(iii) Any part of the cost of permanent benefits that is not allocated to the employee taxable year in which the policy year begins is allocated to the subsequent employee taxable year.

(iv) The cost of permanent benefits for an employee taxable year is the sum of the costs of permanent benefits allocated to that year under paragraph (d)(6) (ii) and (iii) of this section.

(7) *Example.* The provisions of this paragraph may be illustrated by the following example:

*Example.* An employer provides insurance to employee A under a policy that meets the requirements of this section. Under the policy, A, who is 47 years old, received $70,000 of group-term life insurance and elects to receive a permanent benefit under the policy. A pays $2 for each $1,000 of group-term life insurance through payroll deductions and the employer pays the remainder of the premium for the group-term life insurance. The employer also pays one half of the premium specified in the policy for the permanent benefit. A pays the other half of the premium for the permanent benefit through payroll deductions. The policy specifies that the annual premium paid for the permanent benefit is $300. However, the amount of premium allocated to the permanent benefit by the formula in paragraph (d)(2) of this section is $350. A is a calendar year taxpayer; the policy year begins January 1. In year 2000, $200 is includible in A's income because of insurance provided by the employer. This amount is computed as follows:

| | |
|---|---|
| (1) Cost of permanent benefits | $350 |
| (2) Amounts considered paid by A for permanent benefits (½ × $300) | 150 |
| (3) Line (1) minus line (2) | 200 |

| | |
|---|---|
| (4) Cost of $70,000 of group-term life insurance under Table I of § 1.79–3 | 126 |
| (5) Cost of $50,000 of group-term life insurance under Table I of § 1.79–3 | 90 |
| (6) Cost of group-term insurance in excess of $50,000 (line (4) minus line(5)) | 36 |
| (7) Amount considered paid by A for group-term life insurance (70 × $2) | 140 |
| (8) Line (6) minus line (7) (but not less than 0) | 0 |
| (9) Amount includible in income (line (3) plus line (8)) | 200 |

(e) *What is the effect of State law limits?* Section 79 does not apply to life insurance in excess of the limits under applicable state law on the amount of life insurance that can be provided to an employee under a single contract of group-term life insurance.

(f) *Cross references.* (1) See section 79(b) and §1.79–2 for rules relating to group-term life insurance provided to certain retired individuals.

(2) See section 61(a) and the regulations thereunder for rules relating to life insurance not meeting the requirements of section 79, this section, or §1.79–2, such as insurance provided on the life of a non-employee (for example, an employee's spouse), insurance not provided as compensation for personal services performed as an employee, insurance not provided under a policy carried directly or indirectly by the employer, or permanent benefits.

(3) See sections 106 and §1.106–1 for rules relating to certain insurance that does not provide general death benefits, such as travel insurance or accident and health insurance (including amounts payable under a double indemnity clause or rider).

(g) [Reserved]

(h) *Effective date.* Section 1.79–0 applies to insurance provided in employee taxable years beginning on or after January 1, 1977 (except as provided in 26 CFR 1.79–1(g) (revised as of April 1, 1983) with respect to insurance provided in employee taxable years beginning in 1977). Sections 1.79–1 through 1.79–3 apply to insurance provided in employee taxable years beginning after December 31, 1982. See 26 CFR 1.79–1 through 1.79–3 (revised as of April 1, 1983) for rules applicable to insurance provided in employee taxable years beginning before January 1, 1983.

(Secs. 79(c) and 7805 of the Internal Revenue Code of 1954 (78 Stat. 36, 26 U.S.C. 79(c); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7623, 44 FR 28797, May 17, 1979, as amended by T.D. 7917, 48 FR 45762, Oct. 7, 1983; T.D. 7924, 48 FR 54595, Dec. 6, 1983; T.D. 8821, 64 FR 29790, June 3, 1999; T.D. 9223, 70 FR 50971, Aug. 29, 2005]

### § 1.79–2 Exceptions to the rule of inclusion.

(a) *In general.* (1) Section 79(b) provides exceptions for the cost of group-term life insurance provided under certain policies otherwise described in section 79(a). The policy or policies of group-term life insurance which are described in section 79(a) but which qualify for one of the exceptions set forth in section 79(b) are described in paragraphs (b) through (d) of this section. Paragraph (b) of this section discusses the exception provided in section 79(b)(1); paragraph (c) of this section discusses the exception provided in section 79(b)(2); and paragraph (d) of this section discusses the exception provided in section 79(b)(3).

(2)(i) If a policy of group-term life insurance qualifies for an exception provided by section 79(b), then the amount equal to the cost of such insurance is excluded from the application of the provisions of section 79(a).

(ii) If a policy, or portion of a policy of group-term life insurance qualifies for an exception provided by section 79(b), the amount (if any) paid by the employee toward the purchase of such insurance is not to be taken into account as an amount referred to in section 79 (a)(2). In the case of a policy or policies of group-term life insurance which qualify for an exception provided by section 79(b) (1) or (3), the amount paid by the employee which is not to be taken into account as an amount referred to in section 79(a) (2) is the amount paid by the employee for the particular policy or policies of group-term life insurance which qualify for an exception provided under such section. If the exception provided in section 79(b)(2) is applicable only to a portion of the group-term life insurance on the employee's life, the amount considered to be paid by the employee toward the purchase of such portion is the amount equal to the excess of the cost of such portion of the insurance over the amount otherwise includible in the employee's gross income with respect to the group-term life insurance on his life carried directly or indirectly by such employer.

(iii) The rules of this subparagraph may be illustrated by the following example:

*Example.* A is an employee of X Corporation and is also an employee of Y Corporation, a subsidiary of X Corporation. A is provided, under a separate plan arranged by each of his employers, group-term life insurance on his life. During his taxable year, under the group-term life insurance plan of X Corporation, A is provided $60,000 of group-term life insurance on his life, and A pays $360.00 toward the purchase of such insurance. Under the group-term life insurance plan of Y Corporation, A is provided $65,000 of group-term life insurance on his life, but does not pay any part of the cost of such insurance. At the beginning of his taxable year, A terminates his employment with the X Corporation after he has reached the retirement age with respect to such employer, and the policy carried by the X Corporation qualifies for the exception provided by section 79(b)(1). For that taxable year, the cost of the group-term life insurance on A's life which is provided under the plan of X Corporation is not taken into account in determining the amount includible in A's gross income under section 79(a), and A may not take into account as an amount described in section 79(a)(2) the $360.00 he pays toward the purchase of such insurance.

(b) *Retired and disabled employees*—(1) *In general.* Section 79(b)(1) provides an exception for the cost of group-term life insurance on the life of an individual which is provided under a policy or policies otherwise described in section 79(a) if the individual has terminated his employment (as defined in subparagraph (2) of this paragraph) with such employer and either has reached the retirement age with respect to such employer (as defined in subparagraph (3) of this paragraph), or has become disabled (as defined in subparagraph (4)(i) of this paragraph). If an individual who has terminated his employment attains retirement age or has become disabled during his taxable year, or if an employee who has attained retirement age or has become disabled terminates his employment during the taxable year, the exception provided by section 79(b)(1) applies only to the portion of the cost of group-term life insurance which is provided subsequent to the happening of the last event which qualifies the policy of insurance on the employee's life for the exception provided in such section.

(2) *Termination of employment.* For purposes of section 79(b)(1), an individual has terminated his employment with an employer providing such individual group-term life insurance when such individual no longer renders services to that employer as an employee of such employer.

(3) *Retirement age.* For purposes of section 79(b)(1) and this section, the meaning of the term ''retirement age'' is determined in accordance with the following rules—

(i)(*a*) If the employee is covered under a written pension or annuity plan of the employer providing such individual group-term life insurance on his life (whether or not such plan is qualified under section 401(a) or 403(a)), then his retirement age shall be considered to be the earlier of—

(*1*) The earliest age indicated by such plan at which an active employee has the right (or an inactive individual would have the right had he continued in employment) to retire without disability and without the consent of his employer and receive immediate retirement benefits computed at either the full rate or a rate proportionate to completed service as set forth in the normal retirement formula of the plan, *i.e.*, without actuarial or similar reduction because of retirement before some later specified age, or

(*2*) The age at which it has been the practice of the employer to terminate, due to age, the services of the class of employees to which he last belonged.

(*b*) For purposes of (*a*) of this subdivision, if an employee is covered under more than one pension or annuity plan of the employer, his retirement age shall be determined with regard to that plan which covers that class of employees of the employer to which the employee last belonged. If the class of employees to which the employee last belonged is covered under more than one pension or annuity plan, then the employee's retirement age shall be determined with regard to that plan which covers the greatest number of the employer's employees.

(ii) In the absence of a written employee's pension or annuity plan described in subdivision (i) of this subparagraph, retirement age is the age, if any, at which it has been the practice of the employer to terminate, due to age, the services of the class of employees to which the particular employee last belonged, provided such age is reasonable in view of all the pertinent facts and circumstances.

(iii) If neither subdivision (i) or (ii) of this subparagraph applies, the retirement age is considered to be age 65.

(4) *Disabled.* (i) For taxable years beginning after December 31, 1966, an individual is considered disabled for purposes of section 79(b)(1) and subparagraph (1) of this paragraph if he is disabled within the meaning of section 72(m)(7) and paragraph (f) of §1.72–17. For taxable years beginning before January 1, 1967, an individual is considered disabled for purposes of section 79(b)(1) and subparagraph (1) of this paragraph if he is disabled within the meaning of section 213(g)(3), relating to the meaning of disabled, but the determination of the individual's status shall be made without regard to the provisions of section 213(g)(4), relating to the determination of status.

(ii)(*a*) In any taxable year in which an individual seeks to apply the exception set forth in section 79(b)(1) by reason of his being disabled within the meaning of subdivision (i) of this subparagraph, and in which the aggregate amount of insurance on the individual's life subject to the rule of inclusion set forth in section 79(a), but determined without regard to the amount of any insurance subject to any exception set forth in section 79(b), is greater than $50,000 of such insurance, the substantiation required by (*b*) or (*c*) of this subdivision must be submitted with the individual's tax return.

(*b*) For the first taxable year for which the individual seeks to apply the exception set forth in section 79(b)(1) by reason of his being disabled within the meaning of subdivision (i) of this subparagraph, there must be submitted with his income tax return a doctor's statement as to his impairment. There must also be submitted with the return a statement by the individual with respect to the effect of the impairment upon his substantial gainful activity, and the date such impairment occurred. For subsequent taxable years, the taxpayer may, in lieu of such statements, submit a statement declaring the continued existence (without substantial diminution) of the impairment and its continued effect upon his substantial gainful activity.

(*c*) In lieu of the substantiation required to be submitted by (*b*) of this subdivision for the taxable year, the individual may submit a signed statement issued to him by the insurer to the effect that the individual is disabled within the meaning of subdivision (i) of this paragraph. Such statement must set forth the basis for the insurer's determination that the individual was so disabled, and, for the first taxable year in which the individual is so disabled, the date such disability occurred.

(c) *Employer or charity a beneficiary*—(1) *General rule.* Section 79(b)(2) provides an exception with respect to the amounts referred to in section 79 (a) for the cost of any portion of the group-term life insurance on the life of an employee provided during part or all of the taxable year of the employee under which the employer is directly or indirectly the beneficiary, or under which a person described in section 170(c) (relating to definition of charitable contributions) is the sole beneficiary, for the entire period during such taxable year for which the employee receives such insurance.

(2) *Employer is a beneficiary.* For purposes of section 79(b)(2) and subparagraph (1) of this paragraph, the determination of whether the employer is directly or indirectly the beneficiary under a policy or policies of group-term life insurance depends upon the facts and circumstances of the particular case. Such determination is not

made solely with regard to whether the employer possesses all the incidents of ownership in the policy. Thus, for example, if the employer is the nominal beneficiary under a policy of group-term life insurance on the life of his employee but there is an arrangement whereby the employer is required to pay over all (or a portion) of the proceeds of such policy to the employee's estate or his beneficiary, the employer is not considered a beneficiary under such policy (or such portion of the policy).

(3) *Charity a beneficiary.* (i) For purposes of section 79(b)(2) and subparagraph (1) of this paragraph, a person described in section 170(c) is a beneficiary under a policy providing group-term life insurance if such person is designated the beneficiary under the policy by any assignment or designation of beneficiary under the policy which, under the law of the jurisdiction which is applicable to the policy, has the effect of making such person the beneficiary under such policy (whether or not such designation is revocable during the taxable year). Such a designation may be made by the employee with respect to any portion of the group-term life insurance on his life. However, no deduction is allowed under section 170, relating to charitable, etc., contributions and gifts, with respect to any such assignment or designation.

(ii) A person described in section 170(c) must be designated the sole beneficiary under the policy or portion of the policy. Such requirement is satisfied if the person described in section 170(c) is the beneficiary under such policy or portion of the policy, and there is no contingent or similar beneficiary under such policy or such portion other than a person described in section 170(c). A general ''preference beneficiary clause'' in a policy governing payment where there is no designated beneficiary in existence at the death of the employee will not of itself be considered to create a contingent or similar beneficiary. A person described in section 170(c) may be designated the beneficiary under a portion of the policy if such person is designated the sole beneficiary under a beneficiary designation which is expressed, for example, as a fraction of the amount of insurance on the insured's life.

(iii) If a person described in section 170(c) is designated, before May 1, 1964, the beneficiary under the policy (or portion thereof) and such person remains the beneficiary for the period beginning May 1, 1964, and ending with the close of the first taxable year of the employee ending after April 30, 1964, such person shall be treated as the beneficiary under the policy (or the portion thereof) for the period beginning January 1, 1964, and ending April 30, 1964.

(d) *Insurance contracts purchased under qualified employee plans.* (1) Section 79(b)(3) provides an exception with respect to the cost of any group-term life insurance which is provided under a life insurance contract purchased as a part of a plan described in section 403(a), or purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) if the proceeds of such contract are payable directly or indirectly to a participant in such trust or to a beneficiary of such participant. The provisions of section 72(m)(3) and §1.72–16 apply to the cost of such group-term life insurance, and, therefore, no part of such cost is excluded from the gross income of the employee by reason of the provisions of section 79.

(2) Whether the life insurance protection on an employee's life is provided under a qualified employee plan referred to in subparagraph (1) of this paragraph depends upon the provisions of such plan. In determining whether a pension, profit-sharing, stock bonus, or annuity plan satisfies the requirements for qualification set forth in sections 401(a) or 403(a), only group-term life insurance which is provided under such plan is taken into account.

[T.D. 6888, 31 FR 9201, July 6, 1966, as amended by T.D. 6919, 32 FR 7390, May 18, 1967; T.D. 6985, 33 FR 19812, Dec. 27, 1968; T.D. 7623, 44 FR 28800, May 17, 1979]

### § 1.79–3 Determination of amount equal to cost of group-term life insurance.

(a) *In general.* This section prescribes the rules for determining the amount equal to the cost of group-term life insurance on an employee's life which is to be included in his gross income pursuant to the rule of inclusion set forth in section 79(a). Such amount is determined by—

(1) Computing the cost of the portion of the group-term life insurance on the employee's life to be taken into account (determined in accordance with the rules set forth in paragraph (b) of this section) for each ''period of coverage'' (as defined in paragraph (c) of this section) and aggregating the costs so determined, then

(2) Reducing the amount determined under subparagraph (1) of this paragraph by the amount determined in accordance with the rules set forth in paragraph (e) of this section, relating to the amount paid by the employee toward the purchase of group-term life insurance.

(b) *Determination of the portion of the group-term life insurance on the employee's life to be taken into account.* (1) For each ''period of coverage'' (as defined in paragraph (c) of this section), the portion of the group-term life insurance to be taken into account in computing the amount includible in an employee's gross income for purposes of paragraph (a)(1) of this section is the sum of the proceeds payable upon the death of the employee under each policy, or portion of a policy, of group-term life insurance on such employee's life to which the rule of inclusion set forth in section 79(a) applies, less $50,000 of such insurance. Thus, the amount of any proceeds payable under a policy, or portion of a policy, which qualifies for one of the exceptions to the rule of inclusion provided by section 79(b) is not taken into account. For the regulations relating to such exceptions to the rule of inclusion, see §1.79–2.

(2) For purposes of making the computation required by subparagraph (1) of this paragraph in any case in which the amount payable under the policy, or portion thereof, varies during the period of coverage, the amount payable under such policy during such period is considered to be the average of the amount payable under such policy at the beginning and the end of such period.

(3)(i) For purposes of making the computation required by subparagraph (1) of this paragraph in any case in which the amount payable under the policy is not payable as a specific amount upon the death of the employee in full discharge of the liability of the insurer, and such form of payment is not one of alternative methods of payment, the amount payable under such policy is the present value of the agreement by the insurer under the policy to make the payments to the beneficiary or beneficiaries entitled to such amounts upon the employee's death. For each period of coverage, such present value is to be determined as if the first and last day of such period is the date of death of the employee.

(ii) The present value of the agreement by the insurer under the policy to make payments shall be determined by the use of the mortality tables and interest rate employed by the insurer with respect to such a policy in calculating the amount held by the insurer (as defined in section 101(d)(2)), unless the Commissioner otherwise determines that a particular mortality table and interest rate, representative of the mortality table and interest rate used by commercial insurance companies with respect to such policies, shall be used to determine the present value of the policy for purposes of this subdivision.

(iii) For purposes of making the computation required by subdivision (i) of this subparagraph in any case in which it is necessary to determine the age of an employee's beneficiary and such beneficiary remains the same (under the policy, or the portion of the policy, with respect to which the determination of the present value of the agreement of the insurer to pay benefits is being made) for the entire period during the employee's taxable year for which such policy is in effect, the age of such beneficiary is such beneficiary's age at his nearest birthday on June 30th of the calendar year.

(iv) If the policy of group-term life insurance on the employee's life is such that the present value of the agreement by the insurer under the policy to pay benefits cannot be determined by the rules prescribed in this subparagraph, the taxpayer may submit with his return a computation of such present value, consistent with the actuarial and other assumptions set forth in this subparagraph, showing the appropriate factors applied in his case. Such computation shall be subject to the approval of the Commissioner upon examination of such return.

(c) *Period of coverage.* For purposes of this section, the phrase ''period of coverage'' means any one calendar month period, or part thereof, during the employee's taxable year during which the employee is provided group-term life insurance on his life to which the rule of inclusion set forth in section 79(a) applies. The phrase ''part thereof'' as used in the preceding sentence means any continuous period which is less than the one calendar month period referred to in the preceding sentence for which premiums are charged by the insurer.

(d) *The cost of the portion of the group-term life insurance on an employee's life.* (1) This paragraph sets forth the rules for determining the cost, for each period of coverage, of the portion of the group-term life insurance on the employee's life to be taken into account in computing the amount includible in the employee's gross income for purposes of paragraph (a)(1) of this section. The portion of the group-term life insurance on the employee's life to be taken into account is determined in accordance with the provisions of paragraph (b) of this section. Table I, which is set forth in subparagraph (2) of this paragraph, determines the cost for each $1,000 of such portion of the group-term life insurance on the employee's life for each one-month period. The cost of the portion of the group-term life insurance on the employee's life for each period of coverage of one month is obtained by multiplying the number of thousand dollars of such insurance computed to the nearest tenth which is provided during such period by the appropriate amount set forth in Table I. In any case in which group-term life insurance is provided for a period of coverage of less than one month, the amount set forth in Table I is prorated over such period of coverage.

(2) For the cost of group-term life insurance provided after June 30, 1999, the following table sets forth the cost of $1,000 of group-term life insurance provided for one month, computed on the basis of 5-year age brackets. See 26 CFR 1.79–3(d)(2) in effect prior to July 1, 1999, and contained in the 26 CFR part 1 edition revised as of April 1, 1999, for a table setting forth the cost of group-term life insurance provided before July 1, 1999. For purposes of Table I, the age of the employee is the employee's attained age on the last day of the employee's taxable year.

TABLE I—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION

| 5-year age bracket | Cost per $1,000 of protection for one month |
|---|---|
| Under 25 | $0.05 |
| 25 to 29 | .06 |
| 30 to 34 | .08 |
| 35 to 39 | .09 |
| 40 to 44 | .10 |
| 45 to 49 | .15 |
| 50 to 54 | .23 |
| 55 to 59 | .43 |
| 60 to 64 | .66 |
| 65 to 69 | 1.27 |
| 70 and above | 2.06 |

(3) The net premium cost of group-term life insurance as provided in Table I of subparagraph (2) of this paragraph applies only to the cost of group-term life insurance subject to the rule of inclusion set forth in section 79(a). Therefore, such net premium cost is not applicable to the determination of the cost of group-term life insurance provided under a policy which is not subject to such rule of inclusion.

(e) *Effective date*—(1) *General effective date for table.* Except as provided in paragraph (e)(2) of this section, the table in paragraph (d)(2) of this section is applicable July 1, 1999. Until January 1, 2000, an employer may calculate imputed income for all its employees under age 30 using the 5-year age bracket for ages 25 to 29.

(2) *Effective date for table for purposes of §1.79–0.* For a policy of life insurance issued under a plan in existence on June 30, 1999, which would not be treated as carried directly or indirectly by an employer under §1.79–0 (taking into account the Table I in effect on that date), until January 1, 2003, an employer may use either the table in paragraph (d)(2) of this section or the table in effect prior to July 1, 1999 (as

described in paragraph (d)(2) of this section) for determining if the policy is carried directly or indirectly by the employer.

(f) *Amount paid by the employee toward the purchase of group-term life insurance.* (1) Except as otherwise provided in subparagraph (2) of this paragraph, if an employee pays any amount toward the purchase of group-term life insurance provided for a taxable year which is subject to the rule of inclusion set forth in paragraph (a)(2) of §1.79–1, the sum of all such amounts is the amount referred to in section 79(a)(2) and paragraph (a)(2) of this section. The rule of the preceding sentence applies even though the payments made by the employee are made with respect to a period of coverage during which no portion of the group-term life insurance on his life is taken into account under paragraph (b)(1) of this section.

(2) In determining the amount paid by the employee for purposes of section 79(a)(2) and paragraph (a)(2) of this section, there is not taken into account any amounts paid by the employee for group-term life insurance provided (or to be provided) for a different taxable year (other than amounts applicable to regular pay periods extending into the next taxable year). Thus, for example, if part of an employee's payment during a taxable year represents a prepayment for insurance to be provided after his retirement, such part does not reduce the amount includible in his gross income for the current taxable year. Furthermore, in determining such amount, there is not taken into account any amount paid by an employee toward the purchase of group-term life insurance which qualifies for one of the exceptions described in section 79(b). The amount paid by an employee toward the purchase of group-term life insurance which qualifies for one of the exceptions described in section 79(b) is determined under the rules of paragraph (a)(2) of §1.79–2.

(3) If payments are made by the employer and his employees to provide group-term life insurance which is subject to the rule of inclusion set forth in section 79(a) as well as to provide other benefits for the employees, and if the amount paid by the employee toward the purchase of such insurance cannot be determined by the provisions of the policy or plan under which such benefits are provided, then the determination of the portion of the cost of group-term life insurance (computed in accordance with the provisions of this section) which is attributable to the contributions of the employee shall be made in accordance with the provisions of this subparagraph. The amount paid by the employee toward the purchase of all the group-term life insurance on his life for his taxable year (or for the portion of his taxable year if such portion is the basis of the computation) under such group policy shall be an amount determined first by ascertaining the total amount paid by all employees who are covered for multiple benefits which is allocable toward the purchase of group-term life insurance on their lives for the year, and then by ascertaining the pro rata portion of such total amount attributable to the individual employee. The total amount paid by all employees who are covered for multiple benefits which is allocable toward the purchase of group-term life insurance on their lives with respect to such year shall be an amount which bears the same ratio to the total amount paid by all employees for multiple benefits with respect to such year as the aggregate premiums paid to the insurer for group-term life insurance on such employees' lives with respect to such year bears to the aggregate premiums paid to the insurer for such multiple benefits with respect to such year. The pro rata portion of such total amount attributable to the individual employee for the cost of group-term life insurance on his life shall be an amount which bears the same ratio to the total amount paid by all employees which is allocable toward the purchase of group-term insurance on their lives with respect to such year as the amount of group-term life insurance on the life of the employee at a specified time during the year, as determined by the employer, bears to the total amount of group-term life insurance on the lives of all employees insured for such multiple benefits at such time.

(g) *Effect of provision of other benefits*—(1) *In general.* This paragraph discusses the effect of the provision of certain benefits other than group-term life insurance on the life of the employee if the provision of such benefits is contingent upon the underwriting of group-term life insurance on the employee's life to which the rule of inclusion set forth in section 79(a) applies.

(2) *Dependent coverage.* An amount equal to the cost of group-term life insurance on the life of the spouse or other family member of the employee which is provided under a policy of group-term life insurance carried directly or indirectly by his employer is not subject to the provisions of section 79 since it is not on the life of the employee. See paragraph (d)(2)(ii)(*b*) of §1.61–2 for rules regarding the tax treatment of such insurance.

(3) *Disability provisions.* Payments made for disability benefits provided under a group-term life insurance contract are considered to constitute payments made for accident and health insurance. Thus, employer contributions to provide such benefits are excluded from gross income by reason of the provisions of section 106.

(4) *Cost of other benefits.* If a benefit described in this paragraph is provided under a policy under which both the employer and his employees contribute, then, except as otherwise provided in this subparagraph, the employer and the employees will be treated as contributing toward the payment of such benefit at the same rate as they contribute toward the cost of group-term life insurance on the employees' lives. A separate allocation of employer and employee contributions for such benefits is permissible only if—

(i) Such separate allocation is set forth in the group policy and is applicable to all the employees covered under such policy;

(ii) Such separate allocation is followed in transactions between the insurer and the group-policyholder; and

(iii) The allocation set forth in the policy satisfies the requirements of the law of the jurisdiction which is applicable to the contract regarding any minimum or maximum contribution rate by the employer or the employees.

(Secs. 79(c) and 7805 of the Internal Revenue Code of 1954 (78 Stat. 36, 26 U.S.C. 79(c); 68A Stat. 917, 28 U.S.C. 7805))

[T.D. 6888, 31 FR 9203, July 6, 1966, as amended by T.D. 7623, 44 FR 28800, May 17, 1979; T.D. 7924, 48 FR 54595, Dec. 6, 1983; T.D. 8273, 54 FR 47979, Nov. 20, 1989; T.D. 8424, 57 FR 33635, July 30, 1992; T.D. 8821, 64 FR 29790, June 3, 1999]

### § 1.79–4T Questions and answers relating to the nondiscrimination requirements for group-term life insurance (temporary).

Q–1: When does section 79, as amended by the Tax Reform Act of 1984, become effective?

A–1: (a) Generally, section 79, as amended, applies to taxable years (of the employee receiving insurance coverage) beginning after December 31, 1983. There are, however, several exceptions to this effective date where there is coverage under a group-term life insurance plan of the employer that was in existence on January 1, 1984, or a comparable successor to such a plan maintained by the employer or a successor employer.

(b) First, the new rules of section 79 (b) and (e), that require the inclusion in income of a retired employee of amounts attributable to the cost of group-term life insurance in excess of $50,000 and that include former employees within the definition of the term ''employee,'' will not apply to any employee who retired from employment on or before January 1, 1984.

(c) Second, in the case of an individual who retires after January 1, 1984, and before January 1, 1987, the new rules of section 79 (b) and (e) do not apply if (1) the individual attained age 55 on or before January 1, 1984, and (2) the plan was maintained by the same employer who employed the individual during 1983, or by a successor employer.

(d) Third, in the case of an individual who retires after December 31, 1986, the new rules of section 79 (b) and (e) do not apply if (1) the individual attained age 55 on or before January 1, 1984, (2) the plan was maintained by the same employer who employed the individual during 1983, or by a successor employer, and (3) the plan is not, after December 31, 1986, a discriminatory group-term life insurance plan (not taking into account any group-term life insurance coverage provided to employees who retired before January 1, 1987).

(e) For purposes of determining whether a plan is, after December 31, 1986, a discriminatory group-term life insurance plan, there shall be ignored any insurance coverage provided pursuant to a state law requirement that an insurer continue to provide insurance coverage for a period of time not in excess of two months following the termination of a policy.

Q–2: What is meant by a ''group-term life insurance plan of the employer that was in existence on January 1, 1984''?

A–2: A group-term life insurance plan of the employer was in existence on January 1, 1984, only if the group policy or policies providing group-term life insurance benefits under the plan were executed on or before January 1, 1984, and were not terminated prior to such date. The applicability of section 79, as amended, to an employee will not be affected by the transfer of the employee between employers treated as a single employer under section 79(d)(7) if the employee continues, after the transfer, to be provided with group-term life insurance benefits under a plan that is comparable (determined under the principles set forth in Q&A 3) to the plan provided by the former employer.

Q–3: When is a plan of group-term life insurance a ''comparable successor'' to another such plan?

A–3: A plan of group-term life insurance will be a comparable successor to another plan of group-term life insurance (the first plan) only if the plan does not differ from the first plan in any significant aspect with respect to individuals who are potentially eligible for benefits provided under the grandfather provisions in Q&A 1. These individuals consist of those persons who are covered under a plan of group-term life insurance of the employer that was in existence on January 1, 1984, or a comparable successor to such a plan maintained by the employer or a successor employer, and who either retired on or before January 1, 1984, or who both attained age 55 on or before January 1, 1984, and were employed by the employer maintaining the plan (or a predecessor of that employer) during the year 1983. Accordingly, if significant additional or reduced benefits are provided only to individuals who are not described in the preceding sentence, the plan will be considered a comparable successor plan. A plan will not fail to be a comparable successor plan merely because the employer purchases a policy or policies identical to the employer's first plan from a different insurance company. If the new plan provides significant additional or reduced benefits (either as to the type or amount available) to employees, or provides benefits to a category of employees that was formerly excluded from participating in the plan, the plan is generally not a comparable successor to the first plan. However, a plan will not be considered as providing significant additional or reduced benefits merely because a participant's coverage is based on a percentage of compensation and the participant's compensation for the taxable year has been increased or decreased. Furthermore, a plan will not be considered a non-comparable successor plan merely because it is amended, either to decrease benefits provided to key employees or to increase benefits provided to non-key employees, solely in order to comply with the nondiscrimination requirements of section 79(d). Finally, a plan will not be considered a non-comparable successor plan merely because a policy that is part of a discriminatory plan is terminated in order to end discriminatory coverage.

Q–4: For purposes of determining the effective date of section 79, as amended by the Tax Reform Act of 1984, what is a ''successor employer''?

A–4: A successor employer is an employer who employs a group of individuals formerly employed by another employer as a result of a business merger, acquisition or division.

Q–5: Under what circumstances will separate policies of group-term life insurance of an employer be considered to be a single plan in determining whether the employer's plan of group-term life insurance is discriminatory?

A–5: All policies providing group-term life insurance to a common key employee or key employees (as defined in this Q&A) carried directly or indirectly by an employer (or by a group of employers described in section 79(d)(7)) will be considered as a single plan for purposes of determining whether an employer's group-term life insurance plan is discriminatory. For example, if a key employee receives $50,000 of group-term life insurance coverage under one policy and the same key employee receives an additional $250,000 of coverage under a separate group-term life insurance policy, the two policies will be treated as a single plan in determining whether the group-term life insurance provided by the employer is discriminatory. If it is discriminatory, the key employees covered by either policy will not receive the benefit of section 79(a)(1) or section 79(c) for either policy. The result is the same even if each policy, considered alone, would be nondiscriminatory. A policy that provides group-term life insurance to a key employee and a policy under which the same key employee is eligible to receive group-term life insurance upon separation from service will be considered to provide group-term life insurance to a common key employee. In addition, an employer may treat two or more policies that do not provide group-term life insurance to a common key employee as constituting a single plan for purposes of satisfying the nondiscrimination provisions of section 79(d). For example, if the employer provides group-term life insurance coverage for non-key employees under one policy and provides group-term life insurance coverage for key employees under a second policy, the two policies may be considered together in determining whether the requirements of section 79(d) are satisfied with regard to the second policy. For purposes of this section, the term ''key employee'' has the meaning given to such term by paragraph (1) of section 416(i), except that subparagraph (A)(iv) of such paragraph shall be applied by not taking into account employees described in section 79(d)(3)(B) who are not participants in the plan. For purposes of this section, all references to ''plan year'' or ''plan years'' in section 416(g)(4)(C) and section 416(i) shall be deleted and replaced with ''taxable year of the employer'' or ''taxable years of the employer,'' respectively.

Q–6: In the case of a discriminatory group-term life insurance plan, what amounts should be included in the gross income of a key employee?

A–6: (a) In the case of a discriminatory group-term life insurance plan, each key employee must include in gross income for the taxable year the cost of his or her insurance benefit for that year provided by the employer under the plan.

(b) The cost of group-term life insurance coverage provided by an employer for a key employee during the employee's taxable year is determined by apportioning the net premium (group premium less policy dividends, premium refunds or experience rating credits) allocable to the group-term life insurance coverage during the key employee's taxable year, less the actual cost allocated to other key employees pursuant to the method described in the subparagraph (d) of this answer, if applicable, among the covered employees. In the event that the employer has other forms and types of coverage with the same insurer, the employer must make a reasonable allocation of the total premiums paid to the insurer. For example, where an employer has both health insurance coverage and a plan of group-term life insurance with the same insurer, and there is no volume discount, the net premium for the plan of group-term life insurance must include the excess, if any, of the payments the employer makes for the health insurance coverage over the payments the employer would make for such coverage if the plan of group-term life insurance for which this calculation is being made did not exist.

(c) In general, the portion of the net premium for group-term life insurance that should be apportioned to a key employee, other than a key employee to whom the method in subparagraph (d) of this answer is applicable, is determined by: (1) Calculating a ''tabular'' premium for the entire group (with the exception of all key employees to whom the method in subparagraph (d) of this answer is applicable), in the manner described below, (2) determining the ratio of the total actual net premium (less the actual cost allocated to key employees pursuant to the method in the subparagraph (d) of this answer) to the total tabular premium and (3) multiplying the tabular premium for the key employee at his or her attained age by such ratio. Thus, if the total actual net premium is 125 percent of the total tabular premium for all covered employees and the tabular premium at the key employee's attained age is $2.00 per thousand per month, the cost for such employee would be $2.50 per thousand per month ($2.00 times 125 percent). For these purposes the table used to calculate tabular premiums will be determined as follows:

(i) If the group policy contains a reasonable table (based on recognized mortality assumptions) of premium rates on an attained age basis (which table may use age brackets not exceeding five years) with reference to which the group premium is determined, such table will be used;

(ii) If such table is not available, the 1960 Basic Group Table published by the Society of Actuaries will be used.

(d) In cases where the mortality charge for group-term life insurance coverage provided to a key employee is calculated separately by the insurer (for example, where the charge for the coverage provided to a key employee is based on a medical examination) and the amount of such mortality charge plus a proportionate share of the loading charge for the coverage provided to the group is higher than the amount that would be allocable to such employee under the allocation method in subparagraph (c) the cost of group-term life insurance coverage for that employee shall be that higher amount.

Q–7: Must all active and former employees be considered in applying the coverage tests in section 79(d)(3) to determine whether or not a plan of group-term life insurance is discriminatory with respect to coverage?

A–7: No. Generally, a plan of group-term life insurance which covers both active and former employees will not satisfy the nondiscrimination requirements of section 79(d) unless the coverage tests in section 79(d)(3) are satisfied with respect to both the active and the former employees of the employer, except to the extent they are excluded from tests for discrimination by application of the grandfather provisions set forth in Q&A 1. However, for purposes of determining whether a plan is discriminatory with respect to coverage, the coverage tests must be applied separately to active and former employees. In addition, if the plan limits participation by former employees to employees who retired from employment with the employer, then only retired employees must be considered in applying the coverage tests to former employees. Also, in applying the coverage tests in section 79(d)(3), the employer may make reasonable mortality assumptions regarding former employees who are not covered under the plan but must be considered in applying the coverage tests. Furthermore, only those former employees who terminated employment on or after the earliest date of termination from employment for any former employee covered by the plan must be considered. Finally, for purposes of determining whether a plan of group-term life insurance of the employer (or a successor employer) that was in existence on January 1, 1984 (or a comparable successor to such a plan) is discriminatory, after December 31, 1986, with respect to group-term life insurance coverage for former employees, coverage provided to employees who retired on or before December 31, 1986, shall not be taken into account.

Q–8: Will a group-term life insurance plan be considered discriminatory if active employees receive greater benefits as a percentage of compensation than former employees, or vice versa?

A–8: No. For purposes of determining whether a plan is discriminatory with respect to the type and amount of benefits available, insurance coverage for former employees must be tested separately from insurance coverage for active employees. For example, a group-term life insurance plan that provides group-term life insurance benefits equal to 200 percent of compensation for all active employees and 100 percent of final compensation (based on the average annual compensation for the final five years) for all former employees would satisfy the nondiscrimination requirements of section 79(d). However, a group-term life insurance plan that provides group-term life insurance benefits equal to 200 percent of compensation for all active employees and 100 percent of final compensation (based on the average annual compensation for the final five years) only for key employees who are no longer employed by the employer (or a successor employer) would not satisfy the nondiscrimination requirement of section 79(d)(2)(A).

Q–9: Under what circumstances will the amount of benefits available under a plan of group-term life insurance be considered not to discriminate in favor of participants who are key employees?

A–9: A plan of group-term life insurance will be considered not to discriminate in favor of participants who are key employees, as to the amount of benefits available, if the plan provides a fixed amount of insurance which is the same for all covered employees. In other circumstances, the determination of whether a plan is nondiscriminatory will be based on all of the facts and circumstances. Such plans will be considered not to discriminate in favor of participants who are key employees, as to the amount of benefits available, if the plan contains no group of employees described in the following sentence that, if tested separately, would fail to satisfy the requirements of section 79(d)(2)(A). The group subject to separate testing under the preceding sentence consists of a key employee and all other participants (including other key employees) who receive, under the plan, an amount of insurance (as a multiple of compensation (either total compensation or the basic or regular rate of compensation)) that is equal to or greater than the amount of insurance received by such key employee. As described in Q&As 7&8, active and former employees are tested separately under section 79(d)(2)(A).

*Example:* Assume that a plan of group-term life insurance has 500 participants, 10 of whom are key employees. Under the plan, 400 of the non-key employees receive an amount of insurance equal to 100 percent of compensation, while all of the key employees and 90 of the non-key employees receive an amount of insurance equal to 200 percent of compensation. The plan will be considered not to discriminate in favor of the participants who are key employees because, tested separately, the group of participants receiving an amount of insurance equal to or greater than 200 percent of compensation would satisfy the requirements of section 79(d)(2)(A) (by reason of section 79(d)(3)(A)(ii)). If one of the key employees received an amount of insurance equal to 300 percent of compensation, the plan would be considered to discriminate in favor of participants who are key employees, because, tested separately, the group consisting of the single key employee receiving an amount of insurance equal to or greater than 300 percent of compensation would fail to satisfy the requirements of section 79(d)(2)(A).

In determining the groups of employees that are tested separately for this purpose, allowance shall be made for reasonable differences in amount of insurance (as a multiple of compensation) due to rounding, the use of compensation brackets or other similar factors. Thus, if a plan bases group-term life insurance coverage on ''compensation brackets,'' it is not intended that any participants will be treated as receiving an amount of insurance (as a multiple of compensation) that is greater (or less) than that of any other participant merely because the first participant's compensation is at the lower (or higher) end of a compensation bracket while the second participant's compensation is at the higher (or lower) end of a compensation bracket. However, any compensation brackets utilized by a plan will be examined to determine if the brackets, or compensation groupings, result in discrimination in favor of key employees. In addition, a plan does not meet the requirements for nondiscrimination as to the type and amount of benefits available under the plan unless all types of benefits (including permanent benefits) and all terms and conditions with respect to such benefits which are available to any participant who is a key employee are also available on a nondiscriminatory basis to non-key employee participants.

Q–10: How is additional coverage purchased by employees under a plan of group-term life insurance treated for purposes of determining whether a plan of group-term life insurance is discriminatory?

A–10: (a) The extent to which employees purchase additional coverage under a plan of group-term life insurance is not taken into account for purposes of determining whether a plan of group-term life insurance is discriminatory. For example, a plan providing insurance to all employees of 1 times annual compensation, which gives all employees the option to purchase additional insurance of 1 times annual compensation at their own expense, would not be considered discriminatory as to the type and amount of benefits available, even if the group (or groups) of participants who purchase additional insurance, if tested separately, would not satisfy the requirements of section 79(d)(2)(A). Solely for this purpose, the choice of an amount of group-term life insurance as a benefit under a cafeteria plan will be treated as the purchase of group-term life insurance by an employee. If additional insurance coverage is available to any key employee that is not available, on a nondiscriminatory basis, to non-key employees, the plan will be considered discriminatory, even if the full cost of such additional insurance coverage is paid by the employee(s) electing such benefits.

(b) If the employer bears a part of the expense of any additional coverage that is purchased by an employee under a plan of group-term life insurance, the additional insurance shall be treated, in part, as an amount of insurance provided by the employer under the plan and, in part, as an amount of insurance purchased by the employee. Except to the extent provided in subparagraph (a) above, the portion of insurance treated as an amount of insurance purchased by the employee is not taken into account for purposes of determining whether the plan is discriminatory. Whether such insurance (together with any other insurance provided by the employer under the plan) will cause the plan to be considered to discriminate in favor of participants who are key employees is determined under the rules of Q&A 9.

Q–11: What effect do the provisions of section 79(d)(1) have if a plan of group-term life insurance is discriminatory for only part of a year?

A–11: If a plan of group-term life insurance is discriminatory at any time during the key employee's taxable year, then it is a discriminatory group-term life insurance plan for that taxable year and the provisions of section 79(d)(1) will be applicable with respect to all group-term life insurance costs allocable to that employee for that year.

Q–12: Are the section 79(d) provisions independent from the requirements contained in Treas. Reg. §1.79–1?

A–12: Yes. Treasury regulation §1.79–1(c)(1) provides that life insurance provided to a group of employees cannot qualify as group-term life insurance if it is provided to less than ten full-time employees unless certain requirements are satisfied. The satisfaction of these requirements does not guarantee that the plan will be nondiscriminatory, and vice versa. Treasury regulation §1.79–1(a)(4) provides that life insurance is not group-term life insurance unless the amount of insurance provided to each employee is computed under a formula that precludes individual selection. The mere fact that a life insurance policy is nondiscriminatory is not determinative as to whether the policy precludes individual selection, and vice versa.

[T.D. 8073, 51 FR 4315, Feb. 4, 1986; 51 FR 7262, Mar. 3, 1986]

### § 1.82–1 Payments for or reimbursements of expenses of moving from one residence to another residence attributable to employment or self-employment.

(a) *Reimbursements in gross income*—(1) *In general.* Any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence attributable to employment or self-employment is includible in gross income under section 82 as compensation for services in the taxable year received or accrued. For rules relating to the year a deduction may be allowed for expenses of moving from one residence to another residence, see section 217 and the regulations thereunder.

(2) *Amounts received or accrued as reimbursement or payment.* For purposes of this section, amounts are considered as

being received or accrued by an individual as reimbursement or payment whether received in the form of money, property, or services. A cash basis taxpayer will include amounts in gross income under section 82 when they are received or treated as received by him. Thus, for example, if an employer moves an employee's household goods and personal effects from the employee's old resident to his new residence using the employer's facilities, the employee is considered as having received a payment in the amount of the fair market value of the services furnished at the time the services are furnished by the employer. If the employer pays a mover for moving the employee's household goods and personal effects, the employee is considered as having received the payment at the time the employer pays the mover, rather than at the time the mover moves the employee's household goods and personal effects. Where an employee receives a loan or advance from an employer to enable him to pay his moving expenses, the employee will not be deemed to have received a reimbursement of moving expenses until such time as he accounts to his employer if he is not required to repay such loan or advance and if he makes such accounting within a reasonable time. Such loan or advance will be deemed to be a reimbursement of moving expenses at the time of such accounting to the extent used by the employee for such moving expenses.

(3) *Direct or indirect payments or reimbursements*. For purposes of this section amounts are considered as being received or accrued whether received directly (paid or provided to an individual by an employer, a client, a customer, or similar person) or indirectly (paid to a third party on behalf of an individual by an employer, a client, a customer, or similar person). Thus, if an employer pays a mover for the expenses of moving an employee's household goods and personal effects from one residence to another residence, the employee has indirectly received a payment which is includible in his gross income under section 82.

(4) *Expenses of moving from one residence to another residence*. An expense of moving from one residence to another residence is any expenditure, cost, loss, or similar item paid or incurred in connection with a move from one residence to another residence. Moving expenses include (but are not limited to) any expenditure, cost, loss, or similar item directly or indirectly resulting from the acquisition, sale, or exchange of property, the transportation of goods or property, or travel (by the taxpayer or any other person) in connection with a change in residence. Such expenses include items described in section 217(b) (relating to the definition of moving expenses), irrespective of the dollar limitations contained in section 217(b)(3) and the conditions contained in section 217(c), as well as items not described in section 217 (b), such as a loss sustained on the sale or exchange of personal property, storage charges, taxes, or expenses of refitting rugs or draperies.

(5) *Attributable to employment or self-employment*. Any amount received or accrued from an employer, a client, a customer, or similar person in connection with the performance of services for such employer, client, customer, or similar person, is attributable to employment or self-employment. Thus, for example, if an employer reimburses an employee for a loss incurred on the sale of the employee's house, reimbursement is attributable to the performance of services if made because of the employer-employee relationship. Similarly, if an employer in order to prevent an employee's sustaining a loss on a sale of a house acquires the property from the employee at a price in excess of fair market value, the employee is considered to have received a payment attributable to employment to the extent that such payment exceeds the fair market value of the property.

(b) *Effective date*—(1) *In general*. Except as provided in subparagraph (2) of this paragraph, paragraph (a) of this section is applicable only to amounts received or accrued in taxable years beginning after December 31, 1969.

(2) *Election with respect to payments or reimbursements for expenses paid or incurred before January 1, 1971*. Paragraph (a) of this section does not apply with

respect to moving expenses paid or incurred before January 1, 1971, in connection with the commencement of work by an employee at a new principal place of work where such employee had been notified by his employer on or before December 19, 1969, of such move and the employee makes an election under paragraph (h) of §1.217–2.

[T.D. 7195, 37 FR 13533, July 11, 1972, as amended by T.D. 7578, 43 FR 59355, Dec. 20, 1978]

### §1.83–1 Property transferred in connection with the performance of services.

(a) *Inclusion in gross income*—(1) *General rule.* Section 83 provides rules for the taxation of property transferred to an employee or independent contractor (or beneficiary thereof) in connection with the performance of services by such employee or independent contractor. In general, such property is not taxable under section 83(a) until it has been transferred (as defined in §1.83–3(a)) to such person and become substantially vested (as defined in §1.83–3(b)) in such person. In that case, the excess of—

(i) The fair market value of such property (determined without regard to any lapse restriction, as defined in §1.83–3(i)) at the time that the property becomes substantially vested, over

(ii) The amount (if any) paid for such property,

shall be included as compensation in the gross income of such employee or independent contractor for the taxable year in which the property becomes substantially vested. Until such property becomes substantially vested, the transferor shall be regarded as the owner of such property, and any income from such property received by the employee or independent contractor (or beneficiary thereof) or the right to the use of such property by the employee or independent contractor constitutes additional compensation and shall be included in the gross income of such employee or independent contractor for the taxable year in which such income is received or such use is made available. This paragraph applies to a transfer of property in connection with the performance of services even though the transferor is not the person for whom such services are performed.

(2) *Life insurance.* The cost of life insurance protection under a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection is taxable generally under section 61 and the regulations thereunder during the period such contract remains substantially nonvested (as defined in §1.83–3(b)). For the taxation of life insurance protection under a split-dollar life insurance arrangement (as defined in §1.61–22(b)(1) or (2)), see §1.61–22.

(3) *Cross references.* For rules concerning the treatment of employers and other transferors of property in connection with the performance of services, see section 83(h) and §1.83–6. For rules concerning the taxation of beneficiaries of an employees' trust that is not exempt under section 501(a), see section 402(b) and the regulations thereunder.

(b) *Subsequent sale, forfeiture, or other disposition of nonvested property.* (1) If substantially nonvested property (that has been transferred in connection with the performance of services) is subsequently sold or otherwise disposed of to a third party in an arm's length transaction while still substantially nonvested, the person who performed such services shall realize compensation in an amount equal to the excess of—

(i) The amount realized on such sale or other disposition, over

(ii) The amount (if any) paid for such property.

Such amount of compensation is includible in his gross income in accordance with his method of accounting. Two preceding sentences also apply when the person disposing of the property has received it in a non-arm's length transaction described in paragraph (c) of this section. In addition, section 83(a) and paragraph (a) of this section shall thereafter cease to apply with respect to such property.

(2) If substantially nonvested property that has been transferred in connection with the performance of services to the person performing such

services is forfeited while still substantially nonvested and held by such person, the difference between the amount paid (if any) and the amount received upon forfeiture (if any) shall be treated as an ordinary gain or loss. This paragraph (b)(2) does not apply to property to which §1.83–2(a) applies.

(3) This paragraph (b) shall not apply to, and no gain shall be recognized on, any sale, forfeiture, or other disposition described in this paragraph to the extent that any property received in exchange therefor is substantially nonvested. Instead, section 83 and this section shall apply with respect to such property received (as if it were substituted for the property disposed of).

(c) *Dispositions of nonvested property not at arm's length.* If substantially nonvested property (that has been transferred in connection with the performance of services) is disposed of in a transaction which is not at arm's length and the property remains substantially nonvested, the person who performed such services realizes compensation equal in amount to the sum of any money and the fair market value of any substantially vested property received in such disposition. Such amount of compensation is includible in his gross income in accordance with his method of accounting. However, such amount of compensation shall not exceed the fair market value of the property disposed of at the time of disposition (determined without regard to any lapse restriction), reduced by the amount paid for such property. In addition, section 83 and these regulations shall continue to apply with respect to such property, except that any amount previously includible in gross income under this paragraph (c) shall thereafter be treated as an amount paid for such property. For example, if in 1971 an employee pays $50 for a share of stock which has a fair market value of $100 and is substantially monvested at that time and later in 1971 (at a time when the property still has a fair market value of $100 and is still substantially nonvested) the employee disposes of, in a transaction not at arm's length, the share of stock to his wife for $10, the employee realizes compensation of $10 in 1971. If in 1972, when the share of stock has a fair market value of $120, it becomes substantially vested, the employee realizes additional compensation in 1972 in the amount of $60 (the $120 fair market value of the stock less both the $50 price paid for the stock and the $10 taxed as compensation in 1971). For purposes of this paragraph, if substantially nonvested property has been transferred to a person other than the person who performed the services, and the transferee dies holding the property while the property is still substantially nonvested and while the person who performed the services is alive, the transfer which results by reason of the death of such transferee is a transfer not at arm's length.

(d) *Certain transfers upon death.* If substantially nonvested property has been transferred in connection with the performance of services and the person who performed such services dies while the property is still substantially nonvested, any income realized on or after such death with respect to such property under this section is income in respect of a decedent to which the rules of section 691 apply. In such a case the income in respect of such property shall be taxable under section 691 (except to the extent not includible under section 101(b)) to the estate or beneficiary of the person who performed the services, in accordance with section 83 and the regulations thereunder. However, if an item of income is realized upon such death before July 21, 1978, because the property became substantially vested upon death, the person responsible for filing decedent's income tax return for decedent's last taxable year may elect to treat such item as includible in gross income for decedent's last taxable year by including such item in gross income on the return or amended return filed for decedent's last taxable year.

(e) *Forfeiture after substantial vesting.* If a person is taxable under section 83(a) when the property transferred becomes substantially vested and thereafter the person's beneficial interest in such property is nevertheless forfeited pursuant to a lapse restriction, any loss incurred by such person (but not by a beneficiary of such person) upon such forfeiture shall be an ordinary loss to the extent the basis in such property has been increased as a result of the recognition of income by such person under section 83(a) with respect to such property.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* On November 1, 1978, X corporation sells to E, an employee, 100 shares of X corporation stock at $10 per share. At the time of such sale the fair market value of the X corporation stock is $100 per share. Under the terms of the sale each share of stock is subject to a substantial risk of forfeiture which will not lapse until November 1, 1988. Evidence of this restriction is stamped on the face of E's stock certificates, which are therefore nontransferable (within the meaning of §1.83–3(d)). Since in 1978 E's stock is substantially nonvested, E does not include any of such amount in his gross income as compensation in 1978. On November 1, 1988, the fair market value of the X corporation stock is $250 per share. Since the X corporation stock becomes substantially vested in 1988, E must include $24,000 (100 shares of X corporation stock × $250 fair market value per share less $10 price paid by E for each share) as compensation for 1988. Dividends paid by X to E on E's stock after it was transferred to E on November 1, 1973, are taxable to E as additional compensation during the period E's stock is substantially nonvested and are deductible as such by X.

*Example 2.* Assume the facts are the same as in example (1), except that on November 1, 1985, each share of stock of X corporation in E's hands could as a matter of law be transferred to a bona fide purchaser who would not be required to forfeit the stock if the risk of forfeiture materialized. In the event, however, that the risk materializes, E would be liable in damages to X. On November 1, 1985, the fair market value of the X corporation stock is $230 per share. Since E's stock is transferable within the meaning of §1.83–3(d) in 1985, the stock is substantially vested and E must include $22,000 (100 shares of X corporation stock × $230 fair market value per share less $10 price paid by E for each share) as compensation for 1985.

*Example 3.* Assume the facts are the same as in example (1) except that, in 1984 E sells his 100 shares of X corporation stock in an arm's length sale to I, an investment company, for $120 per share. At the time of this sale each share of X corporation's stock has a fair market value of $200. Under paragraph (b) of this section, E must include $11,000 (100 shares of X corporation stock × $120 amount realized per share less $10 price paid by E per share) as compensation for 1984 notwithstanding that the stock remains nontransferable and is still subject to a substantial risk of forfeiture at the time of such sale. Under §1.83–4(b)(2), I's basis in the X corporation stock is $120 per share.

[T.D. 7554, 43 FR 31913, July 24, 1978, as amended by T.D. 9092, 68 FR 54351, Sept. 17, 2003]

### § 1.83–2 Election to include in gross income in year of transfer.

(a) *In general.* If property is transferred (within the meaning of §1.83–3(a)) in connection with the performance of services, the person performing such services may elect to include in gross income under section 83(b) the excess (if any) of the fair market value of the property at the time of transfer (determined without regard to any lapse restriction, as defined in §1.83–3(i)) over the amount (if any) paid for such property, as compensation for services. The fact that the transferee has paid full value for the property transferred, realizing no bargain element in the transaction, does not preclude the use of the election as provided for in this section. If this election is made, the substantial vesting rules of section 83(a) and the regulations thereunder do not apply with respect to such property, and except as otherwise provided in section 83(d)(2) and the regulations thereunder (relating to the cancellation of a nonlapse restriction), any subsequent appreciation in the value of the property is not taxable as compensation to the person who performed the services. Thus, property with respect to which this election is made shall be includible in gross income as of the time of transfer, even though such property is substantially nonvested (as defined in §1.83–3(b)) at the time of transfer, and no compensation will be includible in gross income when such property becomes substantially vested (as defined in §1.83–3(b)). In computing the gain or loss from the subsequent sale or exchange of such property, its basis shall be the amount paid for the property increased by the amount included in gross income under section 83(b). If property for which a section 83(b) election is in effect is forfeited while substantially nonvested, such forfeiture shall be treated as a sale or exchange upon which there is realized a loss equal to the excess (if any) of—

(1) The amount paid (if any) for such property, over,

(2) The amount realized (if any) upon such forfeiture.

If such property is a capital asset in the hands of the taxpayer, such loss shall be a capital loss. A sale or other disposition of the property that is in substance a forfeiture, or is made in contemplation of a forfeiture, shall be treated as a forfeiture under the two immediately preceding sentences.

(b) *Time for making election.* Except as provided in the following sentence, the election referred to in paragraph (a) of this section shall be filed not later than 30 days after the date the property was transferred (or, if later, January 29, 1970) and may be filed prior to the date of transfer. Any statement filed before February 15, 1970, which was amended not later than February 16, 1970, in order to make it conform to the requirements of paragraph (e) of this section, shall be deemed a proper election under section 83(b).

(c) *Manner of making election.* The election referred to in paragraph (a) of this section is made by filing one copy of a written statement with the internal revenue office with whom the person who performed the services files his return. In addition, one copy of such statement shall be submitted with this income tax return for the taxable year in which such property was transferred.

(d) *Additional copies.* The person who performed the services shall also submit a copy of the statement referred to in paragraph (c) of this section to the person for whom the services are performed. In addition, if the person who performs the services and the transferee of such property are not the same person, the person who performs the services shall submit a copy of such statement to the transferee of the property.

(e) *Content of statement.* The statement shall be signed by the person making the election and shall indicate that it is being made under section 83(b) of the Code, and shall contain the following information:

(1) The name, address and taxpayer identification number of the taxpayer;

(2) A description of each property with respect to which the election is being made;

(3) The date or dates on which the property is tansferred and the taxable year (for example, ''calendar year 1970'' or ''fiscal year ending May 31, 1970'') for which such election was made;

(4) The nature of the restriction or restrictions to which the property is subject;

(5) The fair market value at the time of transfer (determined without regard to any lapse restriction, as defined in §1.83–3(i)) of each property with respect to which the election is being made;

(6) The amount (if any) paid for such property; and

(7) With respect to elections made after July 21, 1978, a statement to the effect that copies have been furnished to other persons as provided in paragraph (d) of this section.

(f) *Revocability of election.* An election under section 83(b) may not be revoked except with the consent of the Commissioner. Consent will be granted only in the case where the transferee is under a mistake of fact as to the underlying transaction and must be requested within 60 days of the date on which the mistake of fact first became known to the person who made the election. In any event, a mistake as to the value, or decline in the value, of the property with respect to which an election under section 83(b) has been made or a failure to perform an act contemplated at the time of transfer of such property does not constitute a mistake of fact.

[T.D. 7554, 43 FR 31915, July 24, 1978]

### § 1.83–3 Meaning and use of certain terms.

(a) *Transfer*—(1) *In general.* For purposes of section 83 and the regulations thereunder, a transfer of property occurs when a person acquires a beneficial ownership interest in such property (disregarding any lapse restriction, as defined in §1.83–3(i)). For special rules applying to the transfer of a life insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement (as defined in §1.61–22(b)(1) or (2)), *see* §1.61–22(g).

(2) *Option.* The grant of an option to purchase certain property does not

constitute a transfer of such property. However, see §1.83–7 for the extent to which the grant of the option itself is subject to section 83. In addition, if the amount paid for the transfer of property is an indebtedness secured by the transferred property, on which there is no personal liability to pay all or a substantial part of such indebtedness, such transaction may be in substance the same as the grant of an option. The determination of the substance of the transaction shall be based upon all the facts and circumstances. The factors to be taken into account include the type of property involved, the extent to which the risk that the property will decline in value has been transferred, and the likelihood that the purchase price will, in fact, be paid. See also §1.83–4(c) for the treatment of forgiveness of indebtedness that has constituted an amount paid.

(3) *Requirement that property be returned.* Similarly, no transfer may have occurred where property is transferred under conditions that require its return upon the happening of an event that is certain to occur, such as the termination of employment. In such a case, whether there is, in fact, a transfer depends upon all the facts and circumstances. Factors which indicate that no transfer has occurred are described in paragraph (a) (4), (5), and (6) of this section.

(4) *Similarity to option.* An indication that no transfer has occurred is the extent to which the conditions relating to a transfer are similar to an option.

(5) *Relationship to fair market value.* An indication that no transfer has occurred is the extent to which the consideration to be paid the transferee upon surrendering the property does not approach the fair market value of the property at the time of surrender. For purposes of paragraph (a) (5) and (6) of this section, fair market value includes fair market value determined under the rules of §1.83–5(a)(1), relating to the valuation of property subject to nonlapse restrictions. Therefore, the existence of a nonlapse restriction referred to in §1.83–5(a)(1) is not a factor indicating no transfer has occurred.

(6) *Risk of loss.* An indication that no transfer has occurred is the extent to which the transferee does not incur the risk of a beneficial owner that the value of the property at the time of transfer will decline substantially. Therefore, for purposes of this (6), risk of decline in property value is not limited to the risk that any amount paid for the property may be lost.

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example 1.* On January 3, 1971, X corporation sells for $500 to S, a salesman of X, 10 shares of stock in X corporation with a fair market value of $1,000. The stock is nontransferable and subject to return to the corporation (for $500) if S's sales do not reach a certain level by December 31, 1971. Disregarding the restriction concerning S's sales (since the restrictions is a lapse restriction), S's interest in the stock is that of a beneficial owner and therefore a transfer occurs on January 3, 1971.

*Example 2.* On November 17, 1972, W sells to E 100 shares of stock in W corporation with a fair market value of $10,000 in exchange for a $10,000 note without personal liability. The note requires E to make yearly payments of $2,000 commencing in 1973. E collects the dividends, votes the stock and pays the interest on the note. However, he makes no payments toward the face amount of the note. Because E has no personal liability on the note, and since E is making no payments towards the face amount of the note, the likelihood of E paying the full purchase price is in substantial doubt. As a result E has not incurred the risks of a beneficial owner that the value of the stock will decline. Therefore, no transfer of the stock has occurred on November 17, 1972, but an option to purchase the stock has been granted to E.

*Example 3.* On January 3, 1971, X corporation purports to transfer to E, an employee, 100 shares of stock in X corporation. The X stock is subject to the sole restriction that E must sell such stock to X on termination of employment for any reason for an amount which is equal to the excess (if any) of the book value of the X stock at termination of employment over book value on January 3, 1971. The stock is not transferable by E and the restrictions on transfer are stamped on the certificate. Under these facts and circumstances, there is no transfer of the X stock within the meeting of section 83.

*Example 4.* Assume the same facts as in example (3) except that E paid $3,000 for the stock and that the restriction required E upon termination of employment to sell the stock to M for the total amount of dividends that have been declared on the stock since September 2, 1971, or $3,000 whichever is higher. Again, under the facts and circumstances, no transfer of the X stock has occurred.

*Example 5.* On July 4, 1971, X corporation purports to transfer to G, an employee, 100 shares of X stock. The stock is subject to the sole restriction that upon termination of employment G must sell the stock to X for the greater of its fair market value at such time or $100, the amount G paid for the stock. On July 4, 1971 the X stock has a fair market value of $100. Therefore, G does not incur the risk of a beneficial owner that the value of the stock at the time of transfer ($100) will decline substantially. Under these facts and circumstances, no transfer has occurred.

(b) *Substantially vested and substantially nonvested property.* For purposes of section 83 and the regulations thereunder, property is substantially nonvested when it is subject to a substantial risk of forfeiture, within the meaning of paragraph (c) of this section, and is nontransferable, within the meaning of paragraph (d) of this section. Property is substantially vested for such purposes when it is either transferable or not subject to a substantial risk of forfeiture.

(c) *Substantial risk of forfeiture*—(1) *In general.* For purposes of section 83 and these regulations, whether a risk of forfeiture is substantial or not depends upon the facts and circumstances. Except as set forth in paragraphs (j) and (k) of this section, a substantial risk of forfeiture exists only if rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or upon the occurrence of a condition related to a purpose of the transfer if the possibility of forfeiture is substantial. Property is not transferred subject to a substantial risk of forfeiture if at the time of transfer the facts and circumstances demonstrate that the forfeiture condition is unlikely to be enforced. Further, property is not transferred subject to a substantial risk of forfeiture to the extent that the employer is required to pay the fair market value of a portion of such property to the employee upon the return of such property. The risk that the value of property will decline during a certain period of time does not constitute a substantial risk of forfeiture. A nonlapse restriction, standing by itself, will not result in a substantial risk of forfeiture. A restriction on the transfer of property, whether contractual or by operation of applicable law, will result in a substantial risk of forfeiture only if and to the extent that the restriction is described in paragraph (j) or (k) of this section. For this purpose, transfer restrictions that will not result in a substantial risk of forfeiture include, but are not limited to, restrictions that if violated, whether by transfer or attempted transfer of the property, would result in the forfeiture of some or all of the property, or liability by the employee for any damages, penalties, fees, or other amount.

(2) *Illustrations of substantial risks of forfeiture.* The regularity of the performance of services and the time spent in performing such services tend to indicate whether services required by a condition are substantial. The fact that the person performing services has the right to decline to perform such services without forfeiture may tend to establish that services are insubstantial. Where stock is transferred to an underwriter prior to a public offering and the full enjoyment of such stock is expressly or impliedly conditioned upon the successful completion of the underwriting, the stock is subject to a substantial risk of forfeiture. Where an employee receives property from an employer subject to a requirement that it be returned if the total earnings of the employer do not increase, such property is subject to a substantial risk of forfeiture. On the other hand, requirements that the property be returned to the employer if the employee is discharged for cause or for committing a crime will not be considered to result in a substantial risk of forfeiture. An enforceable requirement that the property be returned to the employer if the employee accepts a job with a competing firm will not ordinarily be considered to result in a substantial risk of forfeiture unless the particular facts and circumstances indicate to the contrary. Factors which may be taken into account in determining whether a convenant not to compete constitutes a substantial risk of forfeiture are the age of the employee, the availability of alternative employment opportunities, the likelihood of the employee's obtaining such other employment, the degree of skill

possessed by the employee, the employee's health, and the practice (if any) of the employer to enforce such covenants. Similarly, rights in property transferred to a retiring employee subject to the sole requirement that it be returned unless he renders consulting services upon the request of his former employer will not be considered subject to a substantial risk of forfeiture unless he is in fact expected to perform substantial services.

(3) *Enforcement of forfeiture condition.* In determining whether the possibility of forfeiture is substantial in the case of rights in property transferred to an employee of a corporation who owns a significant amount of the total combined voting power or value of all classes of stock of the employer corporation or of its parent corporation, there will be taken into account (i) the employee's relationship to other stockholders and the extent of their control, potential control and possible loss of control of the corporation, (ii) the position of the employee in the corporation and the extent to which he is subordinate to other employees, (iii) the employee's relationship to the officers and directors of the corporation, (iv) the person or persons who must approve the employee's discharge, and (v) past actions of the employer in enforcing the provisions of the restrictions. For example, if an employee would be considered as having received rights in property subject to a substantial risk of forfeiture, but for the fact that the employee owns 20 percent of the single class of stock in the transferor corporation, and if the remaining 80 percent of the class of stock is owned by an unrelated individual (or members of such an individual's family) so that the possibility of the corporation enforcing a restriction on such rights is substantial, then such rights are subject to a substantial risk of forfeiture. On the other hand, if 4 percent of the voting power of all the stock of a corporation is owned by the president of such corporation and the remaining stock is so diversely held by the public that the president, in effect, controls the corporation, then the possibility of the corporation enforcing a restriction on rights in property transferred to the president is not substantial, and such rights are not subject to a substantial risk of forfeiture.

(4) *Examples.* The rules contained in paragraph (c)(1) of this section may be illustrated by the following examples. In each example it is assumed that, if the conditions on transfer are not satisfied, the forfeiture provision will be enforced.

*Example 1.* On November 1, 1971, corporation X transfers in connection with the performance of services to E, an employee, 100 shares of corporation X stock for $90 per share. Under the terms of the transfer, E will be subject to a binding commitment to resell the stock to corporation X at $90 per share if he leaves the employment of corporation X for any reason prior to the expiration of a 2-year period from the date of such transfer. Since E must perform substantial services for corporation X and will not be paid more than $90 for the stock, regardless of its value, if he fails to perform such services during such 2-year period, E's rights in the stock are subject to a substantial risk of forfeiture during such period.

*Example 2.* On November 10, 1971, corporation X transfers in connection with the performance of services to a trust for the benefit of employees, $100*x*. Under the terms of the trust any child of an employee who is an enrolled full-time student at an accredited educational institution as a candidate for a degree will receive an annual grant of cash for each academic year the student completes as a student in good standing, up to a maximum of four years. E, an employee, has a child who is enrolled as a full-time student at an accredited college as a candidate for a degree. Therefore, E has a beneficial interest in the assets of the trust equalling the value of four cash grants. Since E's child must complete one year of college in order to receive a cash grant, E's interest in the trust assets are subject to a substantial risk of forfeiture to the extent E's child has not become entitled to any grants.

*Example 3.* On November 25, 1971, corporation X gives to E, an employee, in connection with his performance of services to corporation X, a bonus of 100 shares of corporation X stock. Under the terms of the bonus arrangement E is obligated to return the corporation X stock to corporation X if he terminates his employment for any reason. However, for each year occurring after November 25, 1971, during which E remains employed with corporation X, E ceases to be obligated to return 10 shares of the corporation X stock. Since in each year occurring after November 25, 1971, for which E remains employed he is not required to return 10 shares of corporation X's stock, E's rights in 10 shares each year for 10 years cease to be subject to a substantial risk of forfeiture for each year he remains so employed.

*Example 4.* (a) Assume the same facts as in example (3) except that for each year occurring after November 25, 1971, for which E remains employed with corporation X, X agrees to pay, in redemption of the bonus shares given to E if he terminates employment for any reason, 10 percent of the fair market value of each share of stock on the date of such termination of employment. Since corporation X will pay E 10 percent of the value of his bonus stock for each of the 10 years after November 25, 1971, in which he remains employed by X, and the risk of a decline in value is not a substantial risk of forfeiture, E's interest in 10 percent of such bonus stock becomes substantially vested in each of those years.

(b) The following chart illustrates the fair market value of the bonus stock and the fair market value of the portion of bonus stock that becomes substantially vested on November 25, for the following years:

| Year | Fair market value of | |
|---|---|---|
| | All stock | Portion of stock that becomes vested |
| 1972 | $200 | $20 |
| 1973 | 300 | 30 |
| 1974 | 150 | 15 |
| 1975 | 150 | 15 |
| 1976 | 100 | 10 |

If E terminates his employment on July 1, 1977, when the fair market value of the bonus stock is $100, E must return the bonus stock to X, and X must pay, in redemption of the bonus stock, $50 (50 percent of the value of the bonus stock on the date of termination of employment). E has recognized income under section 83(a) and §1.83–1(a) with respect to 50 percent of the bonus stock, and E's basis in that portion of the stock equals the amount of income recognized, $90. Under §1.83–1(e), the $40 loss E incurred upon forfeiture ($90 basis less $50 redemption payment) is an ordinary loss.

*Example 5.* On January 7, 1971, corporation X, a computer service company, transfers to E, 100 shares of corporation X stock for $50. E is a highly compensated salesman who sold X's products in a three-state area since 1960. At the time of transfer each share of X stock has a fair market value of $100. The stock is transferred to E in connection with his termination of employment with X. Each share of X stock is subject to the sole condition that E can keep such share only if he does not engage in competition with X for a 5-year period in the three-state area where E had previously sold X's products. E, who is 45 years old, has no intention of retiring from the work force. In order to earn a salary comparable to his current compensation, while preventing the risk of forfeiture from arising, E will have to expend a substantial amount of time and effort in another industry or market to establish the necessary business contacts. Thus, under these facts and circumstances E's rights in the stock are subject to a substantial risk of forfeiture.

*Example 6.* On April 3, 2013, Y corporation grants to Q, an officer of Y, a nonstatutory option to purchase Y common stock. Although the option is immediately exercisable, it has no readily ascertainable fair market value when it is granted. Under the option, Q has the right to purchase 100 shares of Y common stock for $10 per share, which is the fair market value of a Y share on the date of grant of the option. On August 1, 2013, Y sells its common stock in an initial public offering. Pursuant to an underwriting agreement entered into in connection with the initial public offering, Q agrees not to sell, otherwise dispose of, or hedge any Y common stock from August 1 through February 1 of 2014 (''the lock-up period''). Q exercises the option and Y shares are transferred to Q on November 15, 2013, during the lock-up period. The underwriting agreement does not impose a substantial risk of forfeiture on the Y shares acquired by Q because the provisions of the agreement do not condition Q's rights in the shares upon anyone's future performance (or refraining from performance) of substantial services or on the occurrence of a condition related to the purpose of the transfer of shares to Q. Accordingly, neither section 83(c)(3) nor the imposition of the lock-up period by the underwriting agreement precludes taxation under section 83 when the shares resulting from exercise of the option are transferred to Q.

*Example 7.* Assume the same facts as in *Example 6*, except that on August 1, 2013, Y also adopts an insider trading compliance program, under which, as applied to 2013, insiders (such as Q) may trade Y shares only during a limited number of days following each quarterly earnings release (''a trading window''). Under the program, if Q trades Y shares outside a trading window without Y's permission, Y has the right to terminate Q's employment. However, the exercise of the nonstatutory options outside a trading window for Y shares is not prohibited under the insider trading compliance program. Q fully exercises the option, and Y shares are transferred to Q, on November 15, 2013. The exercise of the option occurs outside a trading window, and, on the date of exercise, Q is in possession of material nonpublic information concerning Y that would subject him to liability under Rule 10b–5 under the Securities Exchange Act of 1934 if Q sold the Y shares while in possession of such information. Neither the insider trading compliance program nor the potential liability under Rule 10b–5 impose a substantial risk of forfeiture on the

Y shares acquired by Q because the provisions of the program and Rule 10b–5 do not condition Q's rights in the shares upon anyone's future performance (or refraining from performance) of substantial services or on the occurrence of a condition related to the purpose of the transfer of shares to Q. Accordingly, none of section 83(c)(3), the imposition of the trading windows by the insider trading compliance program, and the potential liability under Rule 10b–5 preclude taxation under section 83 when the shares resulting from exercise of the option are transferred to Q.

(d) *Transferability of property*. For purposes of section 83 and the regulations thereunder, the rights of a person in property are transferable if such person can transfer any interest in the property to any person other than the transferor of the property, but only if the rights in such property of such transferee are not subject to a substantial risk of forfeiture. Accordingly, property is transferable if the person performing the services or receiving the property can sell, assign, or pledge (as collateral for a loan, or as security for the performance of an obligation, or for any other purpose) his interest in the property to any person other than the transferor of such property and if the transferee is not required to give up the property or its value in the event the substantial risk of forfeiture materializes. On the other hand, property is not considered to be transferable merely because the person performing the services or receiving the property may designate a beneficiary to receive the property in the event of his death.

(e) *Property*. For purposes of section 83 and the regulations thereunder, the term ''property'' includes real and personal property other than either money or an unfunded and unsecured promise to pay money or property in the future. The term also includes a beneficial interest in assets (including money) which are transferred or set aside from the claims of creditors of the transferor, for example, in a trust or escrow account. See, however, §1.83–8(a) with respect to employee trusts and annuity plans subject to section 402(b) and section 403(c). In the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any undivided interest therein, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section. However, in the case of the transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, which was part of a split-dollar arrangement (as defined in §1.61–22(b)) entered into (as defined in §1.61–22(j)) on or before September 17, 2003, and which is not materially modified (as defined in §1.61–22(j)(2)) after September 17, 2003, only the cash surrender value of the contract is considered to be property. Where rights in a contract providing life insurance protection are substantially nonvested, see §1.83–1(a)(2) for rules relating to taxation of the cost of life insurance protection.

(f) *Property transferred in connection with the performance of services*. Property transferred to an employee or an independent contractor (or beneficiary thereof) in recognition of the performance of, or the refraining from performance of, services is considered transferred in connection with the performance of services within the meaning of section 83. The existence of other persons entitled to buy stock on the same terms and conditions as an employee, whether pursuant to a public or private offering may, however, indicate that in such circumstances a transfer to the employee is not in recognition of the performance of, or the refraining from performance of, services. The transfer of property is subject to section 83 whether such transfer is in respect of past, present, or future services.

(g) *Amount paid*. For purposes of section 83 and the regulations thereunder, the term ''amount paid'' refers to the value of any money or property paid for the transfer of property to which section 83 applies, and does not refer to any amount paid for the right to use such property or to receive the income therefrom. Such value does not include any stated or unstated interest payments. For rules regarding the calculation of the amount of unstated interest payments, see §1.483–1(c). When section 83 applies to the transfer of property pursuant to the exercise of an option, the term ''amount paid'' refers to any amount paid for the grant of the option plus any amount paid as the exercise price of the option. For rules regarding the forgiveness of indebtedness treated as an amount paid, see §1.83–4(c).

(h) *Nonlapse restriction.* For purposes of section 83 and the regulations thereunder, a restriction which by its terms will never lapse (also referred to as a ''nonlapse restriction'') is a permanent limitation on the transferability of property—

(1) Which will require the transferee of the property to sell, or offer to sell, such property at a price determined under a formula, and

(2) Which will continue to apply to and be enforced against the transferee or any subsequent holder (other than the transferor).

A limitation subjecting the property to a permanent right of first refusal in a particular person at a price determined under a formula is a permanent nonlapse restriction. Limitations imposed by registration requirements of State or Federal security laws or similar laws imposed with respect to sales or other dispositions of stock or securities are not nonlapse restrictions. An obligation to resell or to offer to sell property transferred in connection with the performance of services to a specific person or persons at its fair market value at the time of such sale is not a nonlapse restriction. See §1.83–5(c) for examples of nonlapse restrictions.

(i) *Lapse restriction.* For purposes of section 83 and the regulations thereunder, the term ''lapse restriction'' means a restriction other than a nonlapse restriction as defined in paragraph (h) of this section, and includes (but is not limited to) a restriction that carries a substantial risk of forfeiture.

(j) *Sales which may give rise to suit under section 16(b) of the Securities Exchange Act of 1934*—(1) *In general.* For purposes of section 83 and the regulations thereunder if the sale of property at a profit within six months after the purchase of the property could subject a person to suit under section 16(b) of the Securities Exchange Act of 1934, the person's rights in the property are treated as subject to a substantial risk of forfeiture and as not transferable until the earlier of (i) the expiration of such six-month period, or (ii) the first day on which the sale of such property at a profit will not subject the person to suit under section 16(b) of the Securities Exchange Act of 1934. However, whether an option is ''transferable by the optionee'' for purposes of §1.83–7(b)(2)(i) is determined without regard to section 83(c)(3) and this paragraph (j).

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example 1.* On January 1, 1983, X corporation sells to P, a beneficial owner of 12% of X corporation stock, in connection with P's performance of services, 100 shares of X corporation stock at $10 per share. At the time of the sale the fair market value of the X corporation stock is $100 per share. P, as a beneficial owner of more 10% of X corporation stock, is liable to suit under section 16(b) of the Securities Exchange Act of 1934 for recovery of any profit from any sale and purchase or purchase and sale of X corporation stock within a six-month period, but no other restrictions apply to the stock. Because the section 16(b) restriction is applicable to P, P's rights in the 100 shares of stock purchased on January 1, 1983, are treated as subject to a substantial risk of forfeiture and as not transferable through June 29, 1983. P chooses not to make an election under section 83 (b) and therefore does not include any amount with respect to the stock purchase in gross income as compensation on the date of purchase. On June 30, 1983, the fair market value of X corporation stock is $250 per share. P must include $24,000 (100 shares of X corporation stock × $240 ($250 fair market value per share less $10 price paid by P for each share)) in gross income as compensation on June 30, 1983. If, in this example, restrictions other than section 16(b) applied to the stock, such other restrictions (but not section 16(b)) would be taken into account in determining whether the stock is subject to a substantial risk of foreiture and is nontransferable for periods after June 29, 1983.

*Example 2.* Assume the same facts as in example (1) except that P is not an insider on or after May 1, 1983, and the section 16(b) restriction does not apply beginning on that date. On May 1, 1983, P must include in gross income as compensation the difference between the fair market value of the stock on that date and the amount paid for the stock.

*Example 3.* Assume the same facts as in example (1) except that on June 1, 1983, X corporation sells to P an additional 100 shares of X corporation stock at $20 per share. At the time of the sale the fair market value of the X corporation stock is $150 per share. On June 30, 1983, P must include $24,000 in gross income as compensation with respect to the January 1, 1983 purchase. On November 30, 1983, the fair market value of X corporation stock is $200 per share. Accordingly, on that date P must include $18,000 (100 shares of X corporation stock × $180 ($200 fair market value per share less $20 price paid by P for each share)) in gross income as compensation with respect to the June 1, 1983 purchase.

*Example 4.* (i) On June 3, 2013, Y corporation grants to Q, an officer of Y, a nonstatutory option to purchase Y common stock. Y stock is traded on an established securities market. Although the option is immediately exercisable, it has no readily ascertainable fair market value when it is granted. Under the option, Q has the right to purchase 100 shares of Y common stock for $10 per share, which is the fair market value of a Y share on the date of grant of the option. The grant of the option is not one that satisfies the requirements for a transaction that is exempt from section 16(b) of the Securities Exchange Act of 1934. On December 15, 2013, Y stock is trading at more than $10 per share. On that date, Q fully exercises the option, paying the exercise price in cash, and receives 100 Y shares. Q's rights in the shares received as a result of the exercise are not conditioned upon the future performance of substantial services. Because no exemption from section 16(b) was available for the June 3, 2013 grant of the option, the section 16(b) liability period expires on December 1, 2013. Accordingly, the section 16(b) liability period expires *before* the date that Q exercises the option and the Y common stock is transferred to Q. Thus, the shares acquired by Q pursuant to the exercise of the option are not subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b). As a result, section 83(c)(3) does not preclude taxation under section 83 when the shares acquired pursuant to the December 15, 2013 exercise of the option are transferred to Q.

(ii) Assume the same facts as in paragraph (i) of this *Example 4* except that Q exercises the nonstatutory option on October 30, 2013 when Y stock is trading at more than $10 per share. The shares acquired are subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b) through December 1, 2013.

(iii) Assume the same facts as in paragraph (i) of this *Example 4* except that on November 5, 2013, Q also purchases 100 shares of Y common stock on the public market. The purchase of the shares is not a transaction exempt from section 16(b) of the Securities Exchange Act of 1934. Because no exemption from section 16(b) was available for the November 5, 2013 purchase of shares, the section 16(b) liability period with respect to such shares will last for a period of six months after the November 5, 2013 purchase of shares. Notwithstanding the non-exempt purchase of Y common stock on November 5, 2013, the shares acquired by Q pursuant to the December 15, 2013 exercise of the option are not subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b). As a result, section 83(c)(3) does not preclude taxation under section 83 when the shares acquired pursuant to the December 15, 2013 exercise of the option are transferred to Q.

(k) For purposes of section 83 and the regulations thereunder, property is subject to substantial risk of forfeiture and is not transferable so long as the property is subject to a restriction on transfer to comply with the ''Pooling-of-Interests Accounting'' rules set forth in Accounting Series Release Numbered 130 ((10/5/72) 37 FR 20937; 17 CFR 211.130) and Accounting Series Release Numbered 135 ((1/18/73) 38 FR 1734; 17 CFR 211.135).

(l) *Effective/applicability date.* This section applies to property transferred on or after January 1, 2013. For rules relating to property transferred before that date, see §1.83–3 as contained in 26 CFR part 1 (as of April 1, 2012).

[T.D. 7554, 43 FR 31916, July 24, 1978, as amended by T.D. 8042, 50 FR 31713, Aug. 6, 1985; 50 FR 39664, Sept. 30, 1985; T.D. 9092, 68 FR 54351, Sept. 17, 2003; T.D. 9223, 70 FR 50971, Aug. 29, 2005; T.D. 9659, 79 FR 10664, Feb. 26, 2014]

## § 1.83–4 Special rules.

(a) *Holding period.* Under section 83(f), the holding period of transferred property to which section 83(a) applies shall begin just after such property is substantially vested. However, if the person who has performed the services in connection with which property is transferred has made an election under section 83(b), the holding period of such property shall begin just after the date such property is transferred. If property to which section 83 and the regulations thereunder apply is transferred at arm's length, the holding period of such property in the hands of the transferee shall be determined in accordance with the rules provided in section 1223.

(b) *Basis.* (1) Except as provided in paragraph (b)(2) of this section, if property to which section 83 and the regulations thereunder apply is acquired by any person (including a person who acquires such property in a subsequent transfer which is not at arm's length), while such property is still substantially nonvested, such person's basis for the property shall reflect any amount paid for such property and any amount includible in the gross income of the person who performed the services (including any amount so includible as a result of a disposition by the person who acquired such property.) Such basis shall also reflect any adjustments to basis provided under sections 1015 and 1016.

(2) If property to which § 1.83–1 applies is transferred at arm's length, the basis of the property in the hands of the transferee shall be determined under section 1012 and the regulations thereunder.

(c) *Forgiveness of indebtedness treated as an amount paid.* If an indebtedness that has been treated as an amount paid under § 1.83–1(a)(1)(ii) is subsequently cancelled, forgiven or satisfied for an amount less than the amount of such indebtedness, the amount that is not, in fact, paid shall be includible in the gross income of the service provider in the taxable year in which such cancellation, forgiveness or satisfaction occurs.

[T.D. 7554, 43 FR 31918, July 24, 1978]

### § 1.83–5 Restrictions that will never lapse.

(a) *Valuation.* For purposes of section 83 and the regulations thereunder, in the case of property subject to a nonlapse restriction (as defined in § 1.83–3(h)), the price determined under the formula price will be considered to be the fair market value of the property unless established to the contrary by the Commissioner, and the burden of proof shall be on the commissioner with respect to such value. If stock in a corporation is subject to a nonlapse restriction which requires the transferee to sell such stock only at a formula price based on book value, a reasonable multiple of earnings or a reasonable combination thereof, the price so determined will ordinarily be regarded as determinative of the fair market value of such property for purposes of section 83. However, in certain circumstances the formula price will not be considered to be the fair market value of property subject to such a formula price restriction, even though the formula price restriction is a substantial factor in determining such value. For example, where the formula price is the current book value of stock, the book value of the stock at some time in the future may be a more accurate measure of the value of the stock than the current book value of the stock for purposes of determining the fair market value of the stock at the time the stock becomes substantially vested.

(b) *Cancellation*—(1) *In general.* Under section 83(d)(2), if a nonlapse restriction imposed on property that is subject to section 83 is cancelled, then, unless the taxpayer establishes—

(i) That such cancellation was not compensatory, and

(ii) That the person who would be allowed a deduction, if any, if the cancellation were treated as compensatory, will treat the transaction as not compensatory, as provided in paragraph (c)(2) of this section, the excess of the fair market value of such property (computed without regard to such restriction) at the time of cancellation, over the sum of—

(iii) The fair market value of such property (computed by taking the restriction into account) immediately before the cancellation, and

(iv) The amount, if any, paid for the cancellation, shall be treated as compensation for the taxable year in which such cancellation occurs. Whether there has been a noncompensatory cancellation of a nonlapse restriction under section 83(d)(2) depends upon the particular facts and circumstances. Ordinarily the fact that the employee or independent contractor is required to perform additional services or that the salary or payment of such a person is adjusted to take the cancellation into account indicates that such cancellation has a compensatory purpose. On the other hand, the fact that the original purpose of a restriction no longer exists may indicate that the purpose of such cancellation is noncompensatory. Thus, for example, if a so-called ''buy-sell'' restriction was imposed on a corporation's stock to limit ownership of such stock and is being cancelled in connection with a public offering of the stock, such cancellation will generally be regarded as noncompensatory. However, the mere fact that the employer is willing to forego a deduction under section 83(h) is insufficient evidence to establish a noncompensatory cancellation of a nonlapse restriction. The refusal by a corporation or shareholder to repurchase stock of the corporation which is subject to a permanent right of first refusal will generally be treated as a cancellation of a nonlapse restriction. The preceding sentence shall not apply where there is no nonlapse restriction, for example, where the price to be paid for the stock subject to the right of first refusal is the fair market value of the stock. Section 83(d)(2) and this (1) do not apply where immediately after the cancellation of a nonlapse restriction the property is still substantially nonvested and no section 83(b) election has been made with respect to such property. In such a case the rules of section 83(a) and §1.83–1 shall apply to such property.

(2) *Evidence of noncompensatory cancellation.* In addition to the information necessary to establish the factors described in paragraph (b)(1) of this section, the taxpayer shall request the employer to furnish the taxpayer with a written statement indicating that the employer will not treat the cancellation of the nonlapse restriction as a compensatory event, and that no deduction will be taken with respect to such cancellation. The taxpayer shall file such written statement with his income tax return for the taxable year in which or with which such cancellation occurs.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* On November 1, 1971, X corporation whose shares are closely held and not regularly traded, transfers to E, an employee, 100 shares of X corporation stock subject to the condition that, if he desires to dispose of such stock during the period of his employment, he must resell the stock to his employer at its then existing book value. In addition, E or E's estate is obligated to offer to sell the stock at his retirement or death to his employer at its then existing book value. Under these facts and circumstances, the restriction to which the shares of X corporation stock are subject is a nonlapse restriction. Consequently, the fair market value of the X stock is includible in E's gross income as compensation for taxable year 1971. However, in determining the fair market value of the X stock, the book value formula price will ordinarily be regarded as being determinative of such value.

*Example 2.* Assume the facts are the same as in example (1), except that the X stock is subject to the condition that if E desires to dispose of the stock during the period of his employment he must resell the stock to his employer at a multiple of earnings per share that is in this case a reasonable approximation of value at the time of transfer to E. In addition, E or E's estate is obligated to offer to sell the stock at his retirement or death to his employer at the same multiple of earnings. Under these facts and circumstances, the restriction to which the X corporation stock is subject is a nonlapse restriction. Consequently, the fair market value of the X stock is includible in E's gross income for taxable year 1971. However, in determining the fair market value of the X stock, the multiple-of-earnings formula price will ordinarily be regarded as determinative of such value.

*Example 3.* On January 4, 1971, X corporation transfers to E, an employee, 100 shares of stock in X corporation. Each such share of stock is subject to an agreement between X and E whereby E agrees that such shares are to be held solely for investment purposes and not for resale (a so-called investment letter restriction). E's rights in such stock are substantially vested upon transfer, causing the fair market value of each share of X corporation stock to be includible in E's gross income as compensation for taxable year 1971. Since such an investment letter restriction does not constitute a nonlapse restriction, in determining the fair market value of each share, the investment letter restriction is disregarded.

*Example 4.* On September 1, 1971, X corporation transfers to B, an independent contractor, 500 shares of common stock in X corporation in exchange for B's agreement to provide services in the construction of an office building on property owned by X corporation. X corporation has 100 shares of preferred stock outstanding and an additional 500 shares of common stock outstanding. The preferred stock has a liquidation value of \$1,000$x$, which is equal to the value of all assets owned by X. Therefore, the book value of the common stock in X corporation is \$0. Under the terms of the transfer, if B wishes to dispose of the stock, B must offer to sell the stock to X for 150 percent of the then existing book value of B's common stock. The stock is also subject to a substantial risk of forfeiture until B performs the agreed-upon services. B makes a timely election under section 83(b) to include the value of the stock in gross income in 1971. Under these facts and circumstances, the restriction to which the shares of X corporation common stock are subject is a nonlapse restriction. In determining the fair market value of the X common stock at the time of transfer, the book value formula price would ordinarily be regarded as determinative of such value. However, the fair market value of X common stock at the time of transfer, subject to the book value restriction, is greater than $0 since B was willing to agree to provide valuable personal services in exchange for the stock. In determining the fair market value of the stock, the expected book value after construction of the office building would be given great weight. The likelihood of completion of construction would be a factor in determining the expected book value after completion of construction.

[T.D. 7554, 43 FR 31918, July 24, 1978]

## § 1.83–6 Deduction by employer.

(a) *Allowance of deduction*—(1) *General rule*. In the case of a transfer of property in connection with the performance of services, or a compensatory cancellation of a nonlapse restriction described in section 83(d) and § 1.83–5, a deduction is allowable under section 162 or 212 to the person for whom the services were performed. The amount of the deduction is equal to the amount included as compensation in the gross income of the service provider under section 83 (a), (b), or (d)(2), but only to the extent the amount meets the requirements of section 162 or 212 and the regulations thereunder. The deduction is allowed only for the taxable year of that person in which or with which ends the taxable year of the service provider in which the amount is included as compensation. For purposes of this paragraph, any amount excluded from gross income under section 79 or section 101(b) or subchapter N is considered to have been included in gross income.

(2) *Special Rule*. For purposes of paragraph (a)(1) of this section, the service provider is deemed to have included the amount as compensation in gross income if the person for whom the services were performed satisfies in a timely manner all requirements of section 6041 or section 6041A, and the regulations thereunder, with respect to that amount of compensation. For purposes of the preceding sentence, whether a person for whom services were performed satisfies all requirements of section 6041 or section 6041A, and the regulations thereunder, is determined without regard to § 1.6041–3(c) (exception for payments to corporations). In the case of a disqualifying disposition of stock described in section 421(b), an employer that otherwise satisfies all requirements of section 6041 and the regulations thereunder will be considered to have done so timely for purposes of this paragraph (a)(2) if Form W-2 or Form W-2c, as appropriate, is furnished to the employee or former employee, and is filed with the federal government, on or before the date on which the employer files the tax return claiming the deduction relating to the disqualifying disposition.

(3) *Exceptions*. Where property is substantially vested upon transfer, the deduction shall be allowed to such person in accordance with his method of accounting (in conformity with sections 446 and 461). In the case of a transfer to an employee benefit plan described in § 1.162–10(a) or a transfer to an employees' trust or annuity plan described in section 404(a)(5) and the regulations thereunder, section 83(h) and this section do not apply.

(4) *Capital expenditure, etc*. No deduction is allowed under section 83(h) to the extent that the transfer of property constitutes a capital expenditure, an item of deferred expense, or an amount properly includible in the value of inventory items. In the case of a capital expenditure, for example, the basis of the property to which such capital expenditure relates shall be increased at the same time and to the same extent as any amount includible in the employee's gross income in respect of such transfer. Thus, for example, no deduction is allowed to a corporation in respect of a transfer of its stock to a promoter upon its organization, notwithstanding that such promoter must include the value of such stock in his gross income in accordance with the rules under section 83.

(5) *Transfer of life insurance contract (or an undivided interest therein)*—(i)

*General rule*. In the case of a transfer of a life insurance contract (or an undivided interest therein) described in §1.61–22(c)(3) in connection with the performance of services, a deduction is allowable under paragraph (a)(1) of this section to the person for whom the services were performed. The amount of the deduction, if allowable, is equal to the sum of the amount included as compensation in the gross income of the service provider under §1.61–22(g)(1) and the amount determined under §1.61–22(g)(1)(ii).

(ii) *Effective date*—(A) *General rule*. Paragraph (a)(5)(i) of this section applies to any split-dollar life insurance arrangement (as defined in §1.61–22(b)(1) or (2)) entered into after September 17, 2003. For purposes of this paragraph (a)(5), an arrangement is entered into as determined under §1.61–22(j)(1)(ii).

(B) *Modified arrangements treated as new arrangements*. If an arrangement entered into on or before September 17, 2003 is materially modified (within the meaning of §1.61–22(j)(2)) after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

(6) *Effective date*. Paragraphs (a)(1) and (2) of this section apply to deductions for taxable years beginning on or after January 1, 1995. However, taxpayers may also apply paragraphs (a)(1) and (2) of this section when claiming deductions for taxable years beginning before that date if the claims are not barred by the statute of limitations. Paragraphs (a) (3) and (4) of this section are effective as set forth in §1.83–8(b).

(b) *Recognition of gain or loss*. Except as provided in section 1032, at the time of a transfer of property in connection with the performance of services the transferor recognizes gain to the extent that the transferor receives an amount that exceeds the transferor's basis in the property. In addition, at the time a deduction is allowed under section 83(h) and paragraph (a) of this section, gain or loss is recognized to the extent of the difference between (1) the sum of the amount paid plus the amount allowed as a deduction under section 83(h), and (2) the sum of the taxpayer's basis in the property plus any amount recognized pursuant to the previous sentence.

(c) *Forfeitures*. If, under section 83(h) and paragraph (a) of this section, a deduction, an increase in basis, or a reduction of gross income was allowable (disregarding the reasonableness of the amount of compensation) in respect of a transfer of property and such property is subsequently forfeited, the amount of such deduction, increase in basis or reduction of gross income shall be includible in the gross income of the person to whom it was allowable for the taxable year of forfeiture. The basis of such property in the hands of the person to whom it is forfeited shall include any such amount includible in the gross income of such person, as well as any amount such person pays upon forfeiture.

(d) *Special rules for transfers by shareholders*—(1) *Transfers*. If a shareholder of a corporation transfers property to an employee of such corporation or to an independent contractor (or to a beneficiary thereof), in consideration of services performed for the corporation, the transaction shall be considered to be a contribution of such property to the capital of such corporation by the shareholder, and immediately thereafter a transfer of such property by the corporation to the employee or independent contractor under paragraphs (a) and (b) of this section. For purposes of this (1), such a transfer will be considered to be in consideration for services performed for the corporation if either the property transferred is substantially nonvested at the time of transfer or an amount is includible in the gross income of the employee or independent contractor at the time of transfer under §1.83–1(a)(1) or §1.83–2(a). In the case of such a transfer, any money or other property paid to the shareholder for such stock shall be considered to be paid to the corporation and transferred immediately thereafter by the corporation to the shareholder as a distribution to which section 302 applies. For special rules that may applyto a corporation's transfer of its own stock to any person in consideration of services performed for another corporation or partnership, see §1.1032–3. The preceding sentence applies to transfers of stock and amounts paid for such stock occurring on or after May 16, 2000.

(2) *Forfeiture.* If, following a transaction described in paragraph (d)(1) of this section, the transferred property is forfeited to the shareholder, paragraph (c) of this section shall apply both with respect to the shareholder and with respect to the corporation. In addition, the corporation shall in the taxable year of forfeiture be allowed a loss (or realize a gain) to offset any gain (or loss) realized under paragraph (b) of this section. For example, if a shareholder transfers property to an employee of the corporation as compensation, and as a result the shareholder's basis of $200*x* in such property is allocated to his stock in such corporation and such corporation recognizes a short-term capital gain of $800*x*, and is allowed a deduction of $1,000*x* on such transfer, upon a subsequent forfeiture of the property to the shareholder, the shareholder shall take $200*x* into gross income, and the corporation shall take $1,000*x* into gross income and be allowed a short-term capital loss of $800*x*.

(e) *Options.* [Reserved]

(f) *Reporting requirements.* [Reserved]

[T.D. 7554, 43 FR 31919, July 24, 1978, as amended by T.D. 8599, July 19, 1995; T.D. 8883, 65 FR 31076, May 16, 2000; T.D. 9092, 68 FR 54352, Sept. 17, 2003]

### § 1.83–7 Taxation of nonqualified stock options.

(a) *In general.* If there is granted to an employee or independent contractor (or beneficiary thereof) in connection with the performance of services, an option to which section 421 (relating generally to certain qualified and other options) does not apply, section 83(a) shall apply to such grant if the option has a readily ascertainable fair market value (determined in accordance with paragraph (b) of this section) at the time the option is granted. The person who performed such services realizes compensation upon such grant at the time and in the amount determined under section 83(a). If section 83(a) does not apply to the grant of such an option because the option does not have a readily ascertainable fair market value at the time of grant, sections 83(a) and 83(b) shall apply at the time the option is exercised or otherwise disposed of, even though the fair market value of such option may have become readily ascertainable before such time. If the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise, and the employee or independent contractor realizes compensation upon such transfer at the time and in the amount determined under section 83(a) or 83(b). If the option is sold or otherwise disposed of in an arm's length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option. The preceding sentence does not apply to a sale or other disposition of the option to a person related to the service provider that occurs on or after July 2, 2003. For this purpose, a person is related to the service provider if—

(1) The person and the service provider bear a relationship to each other that is specified in section 267(b) or 707(b)(1), subject to the modifications that the language "20 percent" is used instead of "50 percent" each place it appears in sections 267(b) and 707(b)(1), and section 267(c)(4) is applied as if the family of an individual includes the spouse of any member of the family; or

(2) The person and the service provider are engaged in trades or businesses under common control (within the meaning of section 52(a) and (b)); provided that a person is not related to the service provider if the person is the service recipient with respect to the option or the grantor of the option.

(b) *Readily ascertainable defined*—(1) *Actively traded on an established market.* Options have a value at the time they are granted, but that value is ordinarily not readily ascertainable unless the option is actively traded on an established market. If an option is actively traded on an established market, the fair market value of such option is readily ascertainable for purposes of this section by applying the rules of valuation set forth in § 20.2031–2.

(2) *Not actively traded on an established market.* When an option is not actively traded on an established market, it does not have a readily ascertainable

fair market value unless its fair market value can otherwise be measured with reasonable accuracy. For purposes of this section, if an option is not actively traded on an established market, the option does not have a readily ascertainable fair market value when granted unless the taxpayer can show that all of the following conditions exist:

(i) The option is transferable by the optionee;

(ii) The option is exerciseable immediately in full by the optionee;

(iii) The option or the property subject to the option is not subject to any restriction or condition (other than a lien or other condition to secure the payment of the purchase price) which has a significant effect upon the fair market value of the option; and

(iv) The fair market value of the option privilege is readily ascertainable in accordance with paragraph (b)(3) of this section.

(3) *Option privilege.* The option privilege in the case of an option to buy is the opportunity to benefit during the option's exercise period from any increase in the value of property subject to the option during such period, without risking any capital. Similarly, the option privilege in the case of an option to sell is the opportunity to benefit during the exercise period from a decrease in the value of property subject to the option. For example, if at some time during the exercise period of an option to buy, the fair market value of the property subject to the option is greater than the option's exercise price, a profit may be realized by exercising the option and immediately selling the property so acquired for its higher fair market value. Irrespective of whether any such gain may be realized immediately at the time an option is granted, the fair market value of an option to buy includes the value of the right to benefit from any future increase in the value of the property subject to the option (relative to the option exercise price), without risking any capital. Therefore, the fair market value of an option is not merely the difference that may exist at a particular time between the option's exercise price and the value of the property subject to the option, but also includes the value of the option privilege for the remainder of the exercise period. Accordingly, for purposes of this section, in determining whether the fair market value of an option is readily ascertainable, it is necessary to consider whether the value of the entire option privilege can be measured with reasonable accuracy. In determining whether the value of the option privilege is readily ascertainable, and in determining the amount of such value when such value is readily ascertainable, it is necessary to consider—

(i) Whether the value of the property subject to the option can be ascertained;

(ii) The probability of any ascertainable value of such property increasing or decreasing; and

(iii) The length of the period during which the option can be exercised.

(c) *Reporting requirements.* [Reserved]

(d) This section applies on and after July 2, 2003. For transactions prior to that date, see §1.83–7 as published in 26 CFR part 1 (revised as of April 1, 2003).

[T.D. 7554, 43 FR 31920, July 24, 1978, as amended by T.D. 9067, 68 FR 39454, July 2, 2003; T.D. 9148, 69 FR 48392, Aug. 10, 2004]

### § 1.83–8 Applicability of section and transitional rules.

(a) *Scope of section 83.* Section 83 is not applicable to—

(1) A transaction concerning an option to which section 421 applies;

(2) A transfer to or from a trust described in section 401(a) for the benefit of employees or their beneficiaries, or a transfer under an annuity plan that meets the requirements of section 404(a)(2) for the benefit of employees or their beneficiaries;

(3) The transfer of an option without a readily ascertainable fair market value (as defined in §1.83–7(b)(1)); or

(4) The transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant. Section 83 applies to a transfer to or from a trust or under an annuity plan for the benefit of employees, independent contractors, or their beneficiaries (except as provided in paragraph (a)(2) of this section), but to the extent a transfer is subject to section 402(b) or 403(c), section 83 applies to such a transfer only

as provided for in section 402(b) or 403(c).

(b) *Transitional rules*—(1) *In general.* Except as otherwise provided in this paragraph, section 83 and the regulations thereunder shall apply to property transferred after June 30, 1969.

(2) *Binding written contracts.* Section 83 and the regulations thereunder shall not apply to property transferred pursuant to a binding written contract entered into before April 22, 1969. For purposes of this paragraph, a binding written contract means only a written contract under which the employee or independent contractor has an enforceable right to compel the transfer of property or to obtain damages upon the breach of such contract. A contract which provides that a person's right to such property is contingent upon the happening of an event (including the passage of time) may satisfy the requirements of this paragraph. However, if the event itself, or the determination of whether the event has occurred, rests with the board of directors or any other individual or group acting on behalf of the employer (other than an arbitrator), the contract will not be treated as giving the person an enforceable right for purposes of this paragraph.

The fact that the board of directors has the power (either expressly or impliedly) to terminate employment of an officer pursuant to a contract that contemplates the completion of services over a fixed or ascertainable period does not negate the existence of a binding written contract. Nor will the binding nature of the contract be negated by a provision in such contract which allows the employee or independent contractor to terminate the contract for any year and receive cash instead of property if such election would cause a substantial penalty, such as a forfeiture of part or all of the property received in connection with the performance of services in an earlier year.

(3) *Options granted before April 22, 1969.* Section 83 shall not apply to property received upon the exercise of an option granted before April 22, 1969.

(4) *Certain written plans.* Section 83 shall not apply to property transferred (whether or not by the exercise of an option) before May 1, 1970, pursuant to a written plan adopted and approved before July 1, 1969. A plan is to be considered as having been adopted and approved before July 1, 1969, only if prior to such date the transferor of the property undertook an ascertainable course of conduct which under applicable State law does not require further approval by the board of directors or the stockholders of any corporation. For example, if a corporation transfers property to an employee in connection with the performance of services pursuant to a plan adopted and approved before July 1, 1969, by the board of directors of such corporation, it is not necessary that the stockholders have adopted or approved such plan if State law does not require such approval. However, such approval is necessary if required by the articles of incorporation or the bylaws or if, by its terms, such plan will not become effective without such approval.

(5) *Certain options granted pursuant to a binding written contract.* Section 83 shall not apply to property transferred before January 1, 1973, upon the exercise of an option granted pursuant to a binding written contract (as defined in paragraph (b)(2) of this section) entered into before April 22, 1969, between a corporation and the transferor of such property requiring the transferor to grant options to employees of such corporation (or a subsidiary of such corporation) to purchase a determinable number of shares of stock of such corporation, but only if the transferee was an employee of such corporation (or a subsidiary of such corporation) on or before April 22, 1969.

(6) *Certain tax free exchanges.* Section 83 shall not apply to property transferred in exchange for (or pursuant to the exercise of a conversion privilege contained in) property transferred before July 1, 1969, or in exchange for property to which section 83 does not apply (by reason of paragraphs (1), (2), (3), or (4) of section 83(i)), if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, or if gain or loss is not otherwise required to be recognized upon the exercise of such conversion privilege, and if the property received in such exchange

is subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject.

[T.D. 7554, 43 FR 31921, July 24, 1978]

### § 1.84–1 Transfer of appreciated property to political organizations.

(a) *Transfer defined.* A transfer after May 7, 1974, of property to a political organization (as defined in section 527(e)(1), and including a newsletter fund to the extent provided under section 527(g)) is treated as a sale of the property to the political organization if the fair market value of the property exceeds its adjusted basis. The transferor is treated as having realized an amount equal to the fair market value of the property on the date of the transfer. For purposes of this section, a transfer is any assignment, conveyance, or delivery of property other than a bona fide sale for an adequate and full consideration in money or money's worth, whether the transfer is in trust or otherwise, whether the transfer is direct or indirect and whether the property is real or personal, tangible or intangible. Thus, for example, a sale at less than fair market value (other than an ordinary trade discount), or a receipt of property by a political organization under an agency agreement entitling the organization to sell the property and retain all or a portion of the proceeds of the sale, is a transfer within the meaning, of this section. The term ''transfer'' also includes an illegal contribution of property.

(b) *Amount realized.* A transferor to whom this section applies realizes an amount equal to the fair market value of the property on the date of the transfer. For purposes of this section, the definition of fair market value set forth in § 1.170A–1(c) (2) and (3) is incorporated by reference.

(c) *Amount recognized.* A transferor to whom this section applies is treated as having sold the property to the political organization on the date of the transfer. Therefore, the rules of chapter 1 of subtitle A (relating to income tax) apply to the gain realized under this section as if this gain were an amount realized upon the sale of the property. These rules include those of section 55 and section 56 (relating to minimum tax for tax preference), section 306 (relating to disposition of certain stock), section 1201 (relating to the alternative tax on certain capital gains), section 1245 (relating to gain from dispositions of certain depreciable property), and section 1250 (relating to gain from dispositions of certain depreciable realty).

(d) *Holding period.* The holding period of property transferred to a political organization to which this section applies begins on the day after the date of acquisition of the property by the political organization.

[T.D. 7671, 45 FR 8003, Feb. 6, 1980]

### § 1.85–1 Unemployment compensation.

(a) *Introduction.* Section 85 prescribes rules relating to the inclusion in gross income of unemployment compensation (as defined in paragraph (b)(1) of this section) paid in taxable years beginning after December 31, 1978, pursuant to governmental programs. In general, these rules provide that unemployment compensation paid pursuant to governmental programs is includible in the gross income of a taxpayer if the taxpayer's modified adjusted gross income (as defined in paragraph (b)(2) of this section) exceeds a statutory base amount (as defined in paragraph (b)(3) of this section). If there is such an excess, however, the amount included in gross income is limited under paragraph (c)(1) of this section to the lesser of one-half of such excess or the amount of the unemployment compensation. If such taxpayer's modified adjusted gross income does not exceed the applicable statutory base amount, none of the unemployment compensation is included in the taxpayer's gross income.

(b) *Definitions*—(1) *Unemployment compensation*—(i) *General rule.* Except as provided in paragraph (b)(1)(iii) of this section, the term ''unemployment compensation'' means any amount received under a law of the United States, or of a State, which is in the nature of unemployment compensation. Thus, section 85 applies only to unemployment compensation paid pursuant to governmental programs and does not apply to amounts paid pursuant to private non-governmental unemployment compensation plans (which are includible in income without regard to section 85). Generally, unemployment compensation programs are those designed to protect taxpayers against the loss of income caused by involuntary layoff. Ordinarily, unemployment compensation is paid in cash and on a periodic basis. The amount of the payments is usually computed in accordance with formula based on the taxpayer's length of prior employment and wages. Such payments, however, may be made in a lump sum or other than in cash or on some other basis.

(ii) *Disability and worker's compensation payments.* Amounts in the nature of unemployment compensation also include cash disability payments made pursuant to a governmental program as a substitute for case unemployment payments to an unemployed taxpayer who is ineligible for such payments solely because of the disability. Usually these disability payments are paid in the same weekly amount and for the same period as the unemployment compensation benefits to which the unemployed taxpayer otherwise would have been entitled. Amounts received under workmen's compensation acts as compensation for personal injuries or sickness are not amounts in the nature of unemployment compensation. See section 104(a)(1) relating to the exclusion from gross income of such amounts.

(iii) *Employee contributions to a governmental plan.* If a governmental unemployment compensation program is funded in part by an employee's contribution which is not deductible by the employee, an amount paid to such employee under the program is not to be considered unemployment compensation until an amount equal to the total nondeductible contributions paid by the employee to such program has been paid to such employee.

(iv) *Examples of governmental unemployment compensation programs.* Governmental unemployment compensation programs include (but are not limited to) programs established under:

(A) A State law approved by the Secretary of Labor pursuant to section 3304 of the Internal Revenue Code of 1954.

(B) Chapter 85 of title 5, United States Code, relating to unemployment compensation for Federal employees generally and for ex-servicemen.

(C) Trade Act of 1974, sections 231 and 232 (19 U.S.C. 2291 and 2292).

(D) Disaster Relief Act of 1974, section 407 (42 U.S.C. 5177).

(E) The Airline Deregulation Act of 1978 (49 U.S.C. 1552(b)).

(F) The Railroad Unemployment Insurance Act, section 2 (45 U.S.C. 352).

(2) *Modified adjusted gross income.* The term ''modified adjusted gross income'' means the sum of the following amounts:

(i) Adjusted gross income (as defined in section 62);

(ii) All disability payments of the type that are eligible for exclusion from gross income under section 105(d); and

(iii) All amounts of unemployment compensation (as defined in paragraph (b)(1) of this section).

(3) *Base amount.* The term ''base amount'' means—

(i) $25,000 in the case of a joint return under section 6013.

(ii) Zero in the case of a taxpayer who—

(A) Is married (within the meaning of section 143) at the close of the taxable year,

(B) Does not file a joint return for such taxable year, and

(C) Does not live apart (as defined in paragraph (b)(4) of this section) from his or her spouse at all times during the taxable year.

(iii) $20,000 in the case of all other taxpayers.

(4) *Living apart.* A taxpayer does not ''live apart'' from his or her spouse at all times during a taxable year if for any period during the taxable year the taxpayer is a member of the same household as such taxpayer's spouse. A taxpayer is a member of a household for any period, including temporary absences due to special circumstances, during which the household is the taxpayer's place of abode. A temporary absence due to special circumstances includes a nonpermanent absence caused by illness, education, business, vacation, or military service.

(c) *Limitations*—(1) *General rule*. If for a taxable year, a taxpayer's modified adjusted gross income does not exceed the applicable statutory base amount, no amount of unemployment compensation is included in gross income for the taxable year. If there is such an excess, the taxpayer includes in gross income for the taxable year the lesser of the following:

(i) One-half of the excess of the taxpayer's modified adjusted gross income over such taxpayer's base amount, or

(ii) The amount of unemployment compensation.

(2) *Exception for fraudulently received unemployment compensation*. If a taxpayer fraudulently receives unemployment compensation under any governmental unemployment compensation program, then the entire amount of such fraudulently received unemployment compensation must be included in the taxpayer's gross income for the taxable year in which the benefits were received. Thus, the limitation in section 85 and in paragraph (c)(1) of this section, does not apply to such amounts.

(3) *Examples*. The application of this paragraph may be illustrated by the following examples:

*Example 1*. H and W are married taxpayers who for calendar year 1979 file a joint income tax return. During 1979 H receives $4,500 of disability income that is eligible for an exclusion under section 105(d). W works for part of 1979 and receives $20,000 as compensation and also receives $5,000 of unemployment compensation in 1979. Assume that H and W's adjusted gross income is $20,000. The modified adjusted gross income of H and W is $29,500 ($4,500 + $20,000 + $5,000). Since their modified adjusted gross income ($29,500) is greater than their base amount ($25,000), some of the unemployment compensation received by W must be included in their gross income on their 1979 joint income tax return. Under paragraph (c)(1) of this section, of the $5,000 which is unemployment compensation, the lesser of $2,250 (($29,500—$25,000)÷2) or $5,000 must be included in their gross income. Thus, $2,250 of the $5,000 received by W in 1979 is included in the gross income of H and W on their joint income tax return for 1979.

*Example 2*. Assume the same facts in example (1) except H received $5,000 of disability income that is eligible for an exclusion under section 105(d) and W receives $28,000 as compensation, and $4,000 which is unemployment compensation. Assume that H and W's adjusted gross income is $28,000. The modified adjusted gross income of H and W is $37,000 ($4,000 + $28,000 + $5,000). Since their modified adjusted gross income ($37,000) is greater than their base amount ($25,000), all of the unemployment compensation received by W must be included in their gross income on their 1979 joint income tax return. Under paragraph (c)(1) of this section, of the $4,000 which is unemployment compensation, the lesser of $6,000 (($37,000—$25,000)÷2) or $4,000 must be included in their gross income. Thus, all of the $4,000 unemployment compensation received by W is included in the gross income of H and W on their joint income tax return for 1979.

(d) *Cross reference*. See section 6050B, relating to the requirement that every person who makes payments of unemployment compensation aggregating $10 or more to any individual during any calendar year file an information return with the Internal Revenue Service.

[T.D. 7705, 45 FR 46069, July 9, 1980]

## § 1.88–1 Nuclear decommissioning costs.

(a) *In general*. Section 88 provides that the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer that is engaged in the furnishing or sale of electric energy generated by a nuclear power plant must be included in the gross income of such taxpayer in the same manner as amounts charged for electric energy. For this purpose, decommissioning costs directly or indirectly charged to the customers of a taxpayer include all decommissioning costs that consumers are liable to pay by reason of electric energy furnished by the taxpayer during the taxable year, whether payable to the taxpayer, a trust, State government, or other entity, and even though the taxpayer may not control the investment or current expenditure of the amount and the amount may not be paid to the taxpayer at the time decommissioning costs are incurred. However, decommissioning costs payable to a taxpayer holding a qualified leasehold interest (as described in paragraph (b)(2)(ii) of §1.468A–1) are included in the gross income of such taxpayer, and not in the gross income of the lessor.

(b) *Examples.* The following examples illustrate the application of the principles of paragraph (a) of this section:

*Example 1.* X corporation, an accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X, is authorized by the public utility commission of State A to collect nuclear decommissioning costs from ratepayers residing in State A. With respect to the sale of electric energy, X includes in income amounts that have been billed to customers as well as estimated unbilled amounts that relate to energy provided by X after the previous billing but before the end of the taxable year (''accrued unbilled amounts''). The decommissioning costs are included in the monthly bills provided by X to its ratepayers and the entire amount billed is remitted directly to X. Under paragraph (a) of this section, the decommissioning costs must be included in the gross income of X in the same manner as amounts charged for electric energy (*i.e.*, by including in income decommissioning costs that relate to amounts billed as well as decommissioning costs that relate to accrued unbilled amounts). The same rule would apply if the decommissioning costs charged to ratepayers were separately billed and the amounts billed were remitted to State A to be held in trust for the purpose of decommissioning the nuclear power plant owned by X. In that case, X must include in gross income decommissioning costs that relate to amounts billed as well as decommissioning costs that relate to accrued unbilled amounts.

*Example 2.* Assume the same facts as in Example (1), except that X and M, a municipality located in State A, have entered into a life-of-unit contract pursuant to which (i) M is entitled to 20 percent of the electric energy generated by the nuclear power plant owned by X, and (ii) M is obligated to pay 20 percent of the plant operating costs, including decommissioning costs, incurred by X. Under paragraph (a) of this section, the decommissioning costs that relate to electric energy consumed or distributed by M during any taxable year must be included in the gross income of X for such taxable year. The result contained in this example would be the same if M was a State or an agency or instrumentality of a State or a political subdivision thereof.

(c) *Cross reference.* For special rules relating to the deduction for amounts paid to a nuclear decommissioning fund, see §1.468A–1 through §1.468A–5, 1.468A–7, 1.468A–8.

(d) *Effective date.* (1) Section 88 and this section apply to nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer on or after July 18, 1984, and with respect to taxable years ending on or after such date.

(2) If the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer before July 18, 1984, was includible in gross income in a different manner than amounts charged for electric energy, such amount must be included in gross income for the taxable year in which includible in gross income under the method of accounting of the taxpayer that was in effect when such amount was charged to customers.

[T.D. 8184, 53 FR 6804, Mar. 3, 1988]

ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

### § 1.101–1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.

(a)(1) *In general.* Section 101(a)(1) states the general rule that the proceeds of life insurance policies, if paid by reason of the death of the insured, are excluded from the gross income of the recipient. Death benefit payments having the characteristics of life insurance proceeds payable by reason of death under contracts, such as workmen's compensation insurance contracts, endowment contracts, or accident and health insurance contracts, are covered by this provision. For provisions relating to death benefits paid by or on behalf of employers, see section 101(b) and §1.101–2. The exclusion from gross income allowed by section 101(a) applies whether payment is made to the estate of the insured or to any beneficiary (individual, corporation, or partnership) and whether it is made directly or in trust. The extent to which this exclusion applies in cases where life insurance policies have been transferred for a valuable consideration is stated in section 101(a)(2) and in paragraph (b) of this section. In cases where the proceeds of a life insurance policy, payable by reason of the death of the insured, are paid other than in a single sum at the time of such death, the amounts to be excluded from gross income may be affected by the provisions of section 101 (c) (relating to amounts held under agreements to pay interest) or section 101(d) (relating to amounts payable at a date later than death). See §§ 1.101–3 and 1.101–4. However, neither section 101(c) nor section 101(d) applies to a single sum payment which does not exceed the amount payable at the time of death even though such amount is actually paid at a date later than death.

(2) *Cross references.* For rules governing the taxability of insurance proceeds constituting benefits payable on the death of an employee—

(i) Under pension, profit-sharing, or stock bonus plans described in section 401(a) and exempt from tax under section 501(a), or under annuity plans described in section 403(a), see section 72 (m)(3) and paragraph (c) of § 1.72–16;

(ii) Under annuity contracts to which § 1.403(b)–3 applies, see § 1.403(b)–7; or

(iii) Under eligible State deferred compensation plans described in section 457(b), see paragraph (c) of § 1.457–1.

For the definition of a life insurance company, see section 801.

(b) *Transfers of life insurance policies.* (1) In the case of a transfer, by assignment or otherwise, of a life insurance policy or any interest therein for a valuable consideration, the amount of the proceeds attributable to such policy or interest which is excludable from the transferee's gross income is generally limited to the sum of (i) the actual value of the consideration for such transfer, and (ii) the premiums and other amounts subsequently paid by the transferee (see section 101(a)(2) and example (1) of subparagraph (5) of this paragraph). However, this limitation on the amount excludable from the transferee's gross income does not apply (except in certain special cases involving a series of transfers), where the basis of the policy or interest transferred, for the purpose of determining gain or loss with respect to the transferee, is determinable, in whole or in part, by reference to the basis of such policy or interest in the hands of the transferor (see section 101(a)(2)(A) and examples (2) and (4) of subparagraph (5) of this paragraph). Neither does the limitation apply where the policy or interest therein is transferred to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer (see section 101(a)(2)(B)). For rules relating to gratuitous transfers, see subparagraph (2) of this paragraph. For special rules with respect to certain cases where a series of transfers is involved, see subparagraph (3) of this paragraph.

(2) In the case of a gratuitous transfer, by assignment or otherwise, of a life insurance policy or any interest therein, as a general rule the amount of the proceeds attributable to such policy or interest which is excludable from the transferee's gross income under section 101(a) is limited to the sum of (i) the amount which would have been excludable by the transferor (in accordance with this section) if no such transfer had taken place, and (ii) any premiums and other amounts subsequently paid by the transferee. See example (6) of subparagraph (5) of this paragraph. However, where the gratuitous transfer in question is made by or to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer, the entire amount of the proceeds attributable to the policy or interest transferred shall be excludable from the transferee's gross income (see section 101(a)(2)(B) and example (7) of subparagraph (5) of this paragraph).

(3) In the case of a series of transfers, if the last transfer of a life insurance policy or an interest therein is for a valuable consideration—

(i) The general rule is that the final transferee shall exclude from gross income, with respect to the proceeds of such policy or interest therein, only the sum of—

(*a*) The actual value of the consideration paid by him, and

(*b*) The premiums and other amounts subsequently paid by him;

(ii) If the final transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer, the final transferee shall exclude the entire amount of the proceeds from gross income;

(iii) Except where subdivision (ii) of this subparagraph applies, if the basis of the policy or interest transferred, for the purpose of determining gain or loss with respect to the final transferee, is determinable, in whole or in part, by reference to the basis of such policy or interest therein in the hands of the transferor, the amount of the proceeds which is excludable by the final transferee is limited to the sum of—

(*a*) The amount which would have been excludable by his transferor if no such transfer had taken place, and

(*b*) Any premiums and other amounts subsequently paid by the final transferee himself.

(4) For the purposes of section 101(a)(2) and subparagraphs (1) and (3) of this paragraph, a ''transfer for a valuable consideration'' is any absolute transfer for value of a right to receive all or a part of the proceeds of a life insurance policy. Thus, the creation, for value, of an enforceable contractual right to receive all or a part of the proceeds of a policy may constitute a transfer for a valuable consideration of the policy or an interest therein. On the other hand, the pledging or assignment of a policy as collateral security is not a transfer for a valuable consideration of such policy or an interest therein, and section 101 is inapplicable to any amounts received by the pledgee or assignee.

(5) The application of this paragraph may be illustrated by the following examples:

*Example 1.* A pays premiums of $500 for an insurance policy in the face amount of $1,000 upon the life of B, and subsequently transfers the policy to C for $600. C receives the proceeds of $1,000 upon the death of B. The amount which C can exclude from his gross income is limited to $600 plus any premiums paid by C subsequent to the transfer.

*Example 2.* The X Corporation purchases for a single premium of $500 an insurance policy in the face amount of $1,000 upon the life of A, one of its employees, naming the X Corporation as beneficiary. The X Corporation transfers the policy to the Y Corporation in a tax-free reorganization (the policy having a basis for determining gain or loss in the hands of the Y Corporation determined by reference to its basis in the hands of the X Corporation). The Y Corporation receives the proceeds of $1,000 upon the death of A. The entire $1,000 is to be excluded from the gross income of the Y Corporation.

*Example 3.* The facts are the same as in example (2) except that, prior to the death of A, the Y Corporation transfers the policy to the Z Corporation for $600. The Z Corporation receives the proceeds of $1,000 upon the death of A. The amount which the Z Corporation can exclude from its gross income is limited to $600 plus any premiums paid by the Z Corporation subsequent to the transfer of the policy to it.

*Example 4.* The facts are the same as in example (3) except that, prior to the death of A, the Z Corporation transfers the policy to the M Corporation in a tax-free reorganization (the policy having a basis for determining gain or loss in the hands of the M Corporation determined by reference to its basis in the hands of the Z Corporation). The M Corporation receives the proceeds of $1,000 upon the death of A. The amount which the M Corporation can exclude from its gross income is limited to $600 plus any premiums paid by the Z Corporation and the M Corporation subsequent to the transfer of the policy to the Z Corporation.

*Example 5.* The facts are the same as in example (3) except that, prior to the death of A, the Z Corporation transfers the policy to the N Corporation, in which A is a shareholder. The N Corporation receives the proceeds of $1,000 upon the death of A. The entire $1,000 is to be excluded from the gross income of the N Corporation.

*Example 6.* A pays premiums of $500 for an insurance policy in the face amount of $1,000 upon his own life, and subsequently transfers the policy to his wife B for $600. B later transfers the policy without consideration to C, who is the son of A and B. C receives the proceeds of $1,000 upon the death of A. The amount which C can exclude from his gross income is limited to $600 plus any premiums paid by B and C subsequent to the transfer of the policy to B.

*Example 7.* The facts are the same as in example (6) except that, prior to the death of A, C transfers the policy without consideration to A, the insured. A's estate receives the proceeds of $1,000 upon the death of A. The entire $1,000 is to be excluded from the gross income of A's estate.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6783, 29 FR 18356, Dec. 24, 1964; T.D. 7836, 47 FR 42337, Sept. 27, 1982; T.D. 9340, 72 FR 41159, July 26, 2007]

## § 1.101–2 Employees' death benefits.

(a) *In general.* (1) Section 101(b) states the general rule that amounts up to $5,000 which are paid to the beneficiaries or the estate of an employee, or former employee, by or on behalf of an employer and by reason of the death of the employee shall be excluded from the gross income of the recipient. This exclusion from gross income applies whether payment is made to the estate of the employee or to any beneficiary (individual, corporation, or partnership), whether it is made directly or in trust, and whether or not it is made pursuant to a contractual obligation of the employer. The exclusion applies whether payment is made in a single sum or otherwise, subject to the provisions of section 101 (c), relating to amounts held under an agreement to pay interest thereon (see §1.101–3). The exclusion from gross income also applies to any amount not actually paid which is otherwise taxable to a beneficiary of an employee because it was made available as a distribution from an employee's trust.

(2) The exclusion does not apply to amounts constituting income payable to the employee during his life as compensation for his services, such as bonuses or payments for unused leave or uncollected salary, nor to certain other amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living (see section 101(b)(2)(B) and paragraph (d) of this section). Further, the exclusion does not apply to amounts received as an annuity under a joint and survivor annuity obligation where the employee was the primary annuitant and the annuity starting date occurred before the death of the employee (see section 101 (b)(2)(C) and paragraph (e)(1)(ii) of this section). In the case of amounts received by a beneficiary as an annuity (but not as a survivor under a joint and survivor annuity with respect to which the employee was the primary annuitant), the exclusion is applied indirectly by means of the provisions of section 72 and the regulations thereunder (see section 101(b)(2)(D) and paragraph (e)(1) (iii) and (iv) of this section). Thus, for example, the exclusion applies to amounts which are received by a survivor of an employee retired on disability under the provisions of the Civil Service retirement law (5 U.S.C. 8301 or any former corresponding provisions of law) or the Retired Serviceman's Family Protection Plan or Survivor Benefit Plan (10 U.S.C. 1431 *et seq.*), provided such employee dies before attaining mandatory retirement age (as defined in §1.105–4 (a)(3)(i)(B)).

(3) The total amount excludable with respect to any employee may not exceed $5,000, regardless of the number of employers or the number of beneficiaries. For allocation of the exclusion among beneficiaries, see paragraph (c) of this section. For rules governing the taxability of benefits payable on the death of an employee under pension, profitsharing, or stock bonus plans described in section 401(a) and exempt under section 501(a), under annuity plans described in section 403(a), or under annuity contracts to which paragraph (a) or (b) of §1.403(b)–1 applies, see sections 72(m)(3), 402(a), and 403 and the regulations thereunder.

(b) *Payments under certain employee benefit plans*—(1) *In general.* Where a payment is made by reason of the death of an employee by an employer-provided welfare fund or a trust, including a stock bonus, pension, or profitsharing trust described in section 401 (a), or by an insurance company (if such payment does not constitute ''life insurance'' within the purview of section 101(a), the payment shall be considered to have been made by or on behalf of the employer to the extent that it exceeds amounts contributed by, or deemed contributed by, the deceased employee.

(2) *Cross references.* For provisions governing the taxability of distributions payable on the death of an employee participant—

(i) Under a trust described in section 401(a) and exempt from tax under section 501(a), see paragraph (c) of §1.72–16 and paragraph (a)(5) of §1.402 (a)–1;

(ii) Under an annuity plan described in section 403(a), see paragraph (c) of §1.72–16 and paragraph (c) of §1.403 (a)–1;

(iii) Under annuity contracts to which paragraph (a) or (b) of §1.403 (b)–1 applies, see paragraph (c) (2) and (3) of §1.403(b)–1;

(iv) Under eligible State deferred compensation plans described in section 457 (b), see paragraph (c) of §1.457–1.

(c) *Allocation of the exclusion.* (1) Where the aggregate payments by or on behalf of an employer or employers as death benefits to the beneficiaries or the estate of a deceased employee exceed $5,000, the $5,000 exclusion shall be apportioned among them in the same proportion as the amount received by or the present value of the amount payable to each bears to the total death benefits paid or payable by or on behalf of the employer or employers.

(2) The application of the rule in subparagraph (1) of this paragraph may be illustrated by the following example:

*Example.* The M Corporation, the employer of A, a deceased employee who died November 30, 1954, makes payments in 1955 to the beneficiaries of A as follows: $5,000 to W, A's widow, $2,000 to B, the son of A, and $3,000 to C, the daughter of A. No other amounts are paid by any other employer of A to his estate or beneficiaries. By application of the apportionment rule stated above, W, the widow, will exclude $2,500 ($5,000/$10,000, or one-half, of $5,000); B, the son, will exclude $1,000 ($2,000/$10,000, or one-fifth, of $5,000); and C, the daughter, will exclude $1,500 ($3,000/$10,000, or three-tenths, of $5,000).

(d) *Nonforfeitable rights.* (1) Except as provided in subparagraphs (3) and (4) of this paragraph, the exclusion provided by section 101(b) does not apply to amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living. Section 101(b)(2)(B). For the purpose of section 101(b) and this paragraph, an employee shall be considered to have had a nonforfeitable right with respect to—

(i) Any amount to which he would have been entitled—

(*a*) If he had made an appropriate election or demand, or

(*b*) Upon termination of his employment (see examples (5) and (6) of subparagraph (2) of this paragraph); or

(ii) The present value (immediately before his death) of—

(*a*) Amounts payable as an annuity (as defined in paragraph (b) of § 1.72–2, whether immediate or deferred) by or on behalf of the employer (see example (1) of subparagraph (2) of this paragraph), or

(*b*) Amounts which would have been so payable if the employee had terminated his employment and continued to live;

or

(iii) Any amount to the extent it is paid in lieu of amounts described in either subdivision (i) or (ii) of this subparagraph. See examples (2), (3), and (4) of subparagraph (2) of this paragraph.

For purposes of subdivision (iii) of this subparagraph, any amount paid in discharge of an obligation which arose solely because of the existence of a particular fact or circumstance subsequent to the employee's death shall not be considered an amount paid in lieu of amounts described in subdivision (i) or (ii) of this subparagraph. Subdivision (iii) of this subparagraph shall apply, however, to the extent indicated therein, to amounts payable without regard to any such contingency (to the extent that such amounts are equal to or less than those described in subdivision (i) and (ii) of this subparagraph which are not paid). See paragraph (e)(1)(iii)(*b*) of this section for rules with respect to finding the present value of an annuity immediately before the employee's death.

(2) The application of paragraph (d)(1) of this section may be illustrated by the following examples, in which it is assumed that the plans are not ''qualified plans'' and that no employer is an organization referred to in section 170(b)(1)(A) (ii) or (vi) or a religious organization (other than a trust) which is exempt from tax under section 501(a):

*Example 1.* A, who was a participant under the X Company pension plan, retired on December 31, 1953. He had made no contributions to the plan. Upon his retirement, he became entitled to monthly payments of $100 payable for life, or 120 months certain. A died on October 31, 1954, having received 10 monthly payments of $100 each. After his death, the monthly payments became payable to his estate for the remaining 110 months certain. No exclusion from gross income is allowed to A's estate (or any beneficiary who receives the right to such payments from the estate), since the employee's right to the monthly payments was nonforfeitable at the date of his death. It will be noted that in this example it is unnecessary to consider the present value of the annuity to A just before his death since the payments to be made include only those certain to be made in any event under the plan whether or not A continued to live.

*Example 2.* C, a participant under the Y Company pension plan, died on December 15, 1954, while actively in the employment of the company, survived by a widow and minor children. Because of his years of service, he would have been entitled to an annuity for life, his own contributions to the plan and interest thereon being guaranteed, if he had retired or terminated his employment at a time immediately before his death. The plan further provides that—(a) if, but only if, an employee is survived by a widow and minor children, his widow is to receive an annuity for her life without regard to whether or not the employee had begun his annuity; (b) any payments made with respect to his widow's annuity are to reduce the guaranteed amount to an equal extent; and (c) if the employee is not so survived, the guaranteed amount is payable to his beneficiary or estate, but no amount is payable to anyone with respect to what would have been the widow's annuity. In view of these provisions, that portion of the present value of the annuity payable to C's widow which exceeds the guaranteed amount shall be considered paid neither as an amount, nor in lieu of an amount, which C had a nonforfeitable right to receive while living. The reason for this result is that the payment of such excess is contingent upon C's being survived by a widow and minor children, a circumstance existing subsequent to his death. Conversely, to the extent that the present value of the annuity payable to C's widow does not exceed the guaranteed amount, annuity payments attributable to such present value shall be considered paid in lieu of an amount which C had a nonforfeitable right to receive while living.

*Example 3.* D, a participant under the Y Company pension plan, died on January 1, 1955, while actively in the employment of the company. The Y Company plan provides that where an employee dies in service, the present value of the accumulated credits which he could have obtained at that time if he had instead separated from the service shall be paid in a single sum to his surviving spouse or to his estate if no widow survives him. The present value of D's accumulated credits, at the time of his death, was $10,000. However, the plan also provides that a surviving spouse may elect to take, in lieu of a single sum, an annuity the present value of which exceeds such sum by $2,500. D's widow elects to receive an annuity (the present value of which is $12,500). Therefore, $2,500 is an amount to which the exclusion of section 101(b) and this section shall apply.

*Example 4.* A, an employee of the X Company, continues to work after reaching the normal retirement age of 60 years, although he could have retired at that age and obtained an annuity of $3,000 per year for his life. A is not entitled to any part of the annuity while he is employed and receiving compensation. A dies at the age of 67 while still in active employment. Since he had passed normal retirement age, his additional years of service did not entitle him to a larger annuity at age 67 than that which he could have obtained at age 60. However, the plan of the X Company provides that in the event of an employee's death prior to separation from the service, his widow is to be paid an annuity for her life in the same amount per year as that which the employee could have obtained if he had instead retired; but if no widow survives him, the present value of the annuity which the employee could have obtained at a time just before his death is to be paid to a named beneficiary or the estate of the employee. Assuming that the present value of the annuity to A's widow, whose age is 61, is $36,000 and the present value of the annuity which would have been payable to A at age 67 if he had then retired is $23,500, the present value of the widow's annuity, to the extent of $23,500, is an amount which is payable in lieu of amounts which the employee had a nonforfeitable right to receive while living because it does not exceed the value of his nonforfeitable rights and is not otherwise paid. On the other hand, the $12,500 excess of the value of the widow's annuity ($36,000) over the value of the employee's annuity ($23,500) is an amount to which section 101(b) applies since the employee had no right to any part of it. If no other death benefits are payable, a $5,000 exclusion is available (see section 101(b)(2)(D) and paragraph (e) of this section).

*Example 5.* The trustee of the X Corporation noncontributory profit-sharing plan is required under the provisions of the plan to pay to the beneficiary of B, an employee of the X Corporation who died on July 1, 1955, the benefit due on account of the death of B. The provisions of the profit-sharing plan give each participating employee in case of termination of employment a 10-percent vested interest in the amount accumulated in his account for each year of participation in the plan. In case of death, the entire credit in the participant's account is to be paid to his beneficiary. At the time of B's death, he had been a participant for three years and the accumulation in his account was $8,000. After his death this amount is paid to his beneficiary. At the time of B's death, the amount distributable to him on account of termination of employment would have been $2,400 (30 percent of $8,000). The difference of $5,600 ($8,000 minus $2,400), payable to the beneficiary of B, is an amount payable solely by reason of B's death. Accordingly, $5,000 of the $5,600 may be excluded from the gross income of the beneficiary receiving such payment (assuming no other death benefits are involved). However, if it is assumed that the facts are the same as above, except that at the time of his death B has been a participant for 6 years, the amount distributable to him on account of termination of employment would have been $4,800 (60 percent of $8,000). The difference of $3,200 ($8,000 minus $4,800), payable to B's beneficiary, is an amount payable solely by reason of B's death. Accordingly, only $3,200 may be excluded from the gross income of the beneficiary receiving such payment (assuming no other death benefits are involved).

*Example 6.* The X Corporation instituted a trust, forming part of a pension plan, for its employees, the cost thereof being borne entirely by the corporation. The plan provides, in part, that after 10 or more years of service and attaining the age of 55, an employee can elect to retire and receive benefits before the normal retirement date contingent upon the employer's approval. If he retires without the employer's consent, or voluntarily leaves the company, no benefits are or will be payable. The plan further provides that if the employee is involuntarily separated or dies before retirement, he or his beneficiary, respectively, will receive a percentage of the reserve provided for the employee in the trust fund on the following basis: 10 to 15 years of service, 25 percent; 15 to 20 years of service, 50 percent; 20 to 25 years of service, 75 percent; 25 or more years of service, 100 percent. A, an employee of the X Corporation for 17 years, died at the age of 56 while in the employ of the corporation. At the time of his death, $15,000 was the reserve provided for him in the trust. His beneficiary receives $7,500, an amount equal to 50 percent of the reserve provided for A's retirement; accordingly, $5,000 of the $7,500 may be excluded from the gross income of the beneficiary receiving such payment (assuming no other death benefits are involved) since A, prior to his death, had only a forfeitable right to receive $7,500.

(3)(i) Notwithstanding the rule stated in subparagraph (1) of this paragraph and illustrated in subparagraph (2) of this paragraph, the exclusion from gross income provided by section 101(b) applies to the receipt of certain amounts, paid under ''qualified'' plans, with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living (see section 101(b)(2)(B) (i) and (ii)). The payments to which this exclusion applies are—

(*a*) ''Total distributions payable'' by a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a), and

(*b*) ''Total amounts'' paid under an annuity contract under a plan described in section 403(a), provided such distributions or amounts are paid in full within one taxable year of the distributee (see example (3) of subdivision (ii) of this subparagraph). For the purposes of applying section 101(b), ''Total distributions payable'' means the balance to the credit of an employee which becomes payable to a distributee on account of the employee's death, either before or after separation from the service (see section 402(a)(3)(C), the regulations thereunder, and examples (2) and (4) of subdivision (ii) of this subparagraph); and ''total amounts'' means the balance to the credit of an employee which becomes payable to the payee by reason of the employee's death, either before or after separation from the service (see section 403(a)(2)(B), the regulations thereunder, and example (1) of subdivision (ii) of this subparagraph). See subparagraph (4) of this paragraph relating to the exclusion of amounts which are received under annuity contracts purchased by certain exempt organizations and with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living.

(ii) The application of the provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

*Example 1.* The widow of an employee elects, under a noncontributory ''qualified'' plan, to receive in a lump sum the present value of the annuity which C, the deceased employee, could have obtained at a time just before his death if he had retired at that time. Such present value is $6,000. Of this amount, $5,000 is excludable from the widow's gross income despite the fact that C had a nonforfeitable right to the amount in lieu of which the payment is made, since such payment is an amount to which subdivision (i) of this subparagraph applies (assuming no other death benefits are involved).

*Example 2.* The trustee of the X Corporation noncontributory, ''qualified'', profit-sharing plan is required under the provisions of the plan to pay to the beneficiary of B, an employee of the X Corporation who died on July 1, 1955, the benefit due on account of the death of B. The provisions of the profit-sharing plan give each participating employee, in case of termination of employment, a 10 percent vested interest in the amount accumulated in his account for each year of participation in the plan, but, in case of death, the entire credit to the participant's account is to be paid to his beneficiary. At the time of B's death, he had been a participant for five years. The accumulation in his account was $8,000, and the amount which would have been distributable to him in the event of termination of employment was $4,000 (50 percent of $8,000). After his death, $8,000 is paid to his beneficiary in a lump sum. (It may be noted that these are the same facts as in example (5) of subparagraph (2) of this paragraph except that the employee has been a participant for five years instead of three and the plan is a ''qualified'' plan.) It is immaterial that the employee had a nonforfeitable right to $4,000, because the payment of the $8,000 to the beneficiary is the payment of the ''total distributions payable'' within one taxable year of the distributee to which subdivision (i) of this subparagraph applies. Assuming no other death benefits are involved, the beneficiary may exclude $5,000 of the $8,000 payment from gross income.

*Example 3.* The facts are the same as in example (2) except that the beneficiary is entitled to receive only the $4,000 to which the employee had a nonforfeitable right and elects, 30 days after B's death, to receive it over a period of ten years. Since the ''total distributions payable'' are not paid within one taxable year of the distributee, no exclusion from gross income is allowable with respect to the $4,000.

*Example 4.* The X Corporation instituted a trust, forming part of a ''qualified'' profit-sharing plan for its employees, the cost thereof being borne entirely by the corporation. The plan provides, in part, that if, after 10 or more years of service, an employee leaves the employ of the corporation, either voluntarily or involuntarily, before retirement, a percentage of the reserve provided for the employee in the trust fund will be paid to the employee as follows: 10 to 15 years of service, 25 percent; 15 to 20 years of service, 50 percent; 20 to 25 years of service, 75 percent; 25 or more years of service, 100 percent. The plan further provides that if an employee dies before reaching retirement age, his beneficiary will receive a percentage of the reserve provided for the employee in the trust fund, on the same basis as shown in the preceding sentence. A, an employee of the X Corporation for 17 years, died before attaining retirement age while in the employ of the corporation. At the time of his death, $15,000 was the reserve provided for him in the trust fund. His beneficiary receives $7,500 in a lump sum, an amount equal to 50 percent of the reserve provided for A's retirement. The beneficiary may exclude from gross income (assuming no other death benefits are involved) $5,000 of the $7,500, since the latter amount constitutes ''total distributions payable'' paid within one taxable year of the distributee, to which subdivision (i) of this subparagraph applies.

(4)(i) Notwithstanding the rule stated in subparagraph (1) of this paragraph and illustrated in subparagraph (2) of this paragraph, the exclusion from gross income under section 101(b) also applies (but only to the extent provided in the next sentence) to amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living—

(*a*) If such amounts are paid under an annuity contract purchased by an employer which is an organization referred to in section 170(b)(1)(A) (ii) or (vi) or which is a religious organization (other than a trust) and which is exempt from tax under section 501(a).

(*b*) If such amounts are paid as part of a ''total payment'' with respect to the deceased employee; and

(*c*) If such ''total payment'' is paid in full within one taxable year of the payee beginning after December 31, 1957.

However, the amount that is excludable under section 101(b) by reason of this subparagraph shall not exceed an amount which bears the same ratio to the amount which would be includible in the payee's gross income if it were not for the second sentence of section 101(b)(2)(B) and this subparagraph, as the amount contributed by the employer for the annuity contract that was excludable from the deceased employee's gross income under paragraph (b) of §1.403(b)–1 bears to the total amount contributed by the employer for the annuity contract. See section 101(b)(2)(B)(iii). For purposes of this subparagraph, a ''total payment'' means a payment of the balance to the credit of an employee with respect to all ''section 403(b) annuities'' purchased by the employer which becomes payable to the payee by reason of the employee's death, either before or after separation from the service. An annuity contract will be regarded as a ''section 403(b) annuity'' if any amount contributed (or considered as contributed under paragraph (b)(2) of §1.403(b)–1) by the employer for such contract was excludable from the employee's gross income under paragraph (b) of §1.403(b)–1. Under this definition, therefore, an annuity contract may be regarded as a ''section 403(b) annuity'' even though some of the employer's contributions for the contract were not excludable from the employee's gross income under paragraph (b) of §1.403(b)–1 because, for example, the employer was not an exempt organization when such contributions were paid. For purposes of computing the ratio described in this subdivision in such a case, the total amount contributed by the employer for the contract includes the amounts contributed by the employer when it was not an exempt organization.

(ii) This subparagraph does not relate to any amounts with respect to which the deceased employee did not possess, immediately before his death, a nonforfeitable right to receive the amounts while living. Such amounts are excludable under the provisions of section 101(b) without regard to section 101(b)(2)(B) and this subparagraph. Thus, if a ''total payment'' received by a beneficiary of a deceased employee under an annuity contract purchased by an organization described in subdivision (i)(*a*) of this subparagraph consists both of amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living and of amounts with respect to which the deceased employee did not possess such a nonforfeitable right, only those amounts with respect to which the deceased employee possessed such a nonforfeitable right are amounts to which this subparagraph applies. Therefore, for purposes of computing the ratio described in subdivision (i) of this subparagraph in such a case, there shall be taken into account only the employer contributions attributable to those amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living. See example (3) of subdivision (v) of this subparagraph. In no event, however, may the total amount excludable under section 101(b) with respect to any employee exceed $5,000 (See paragraph (a)(3) of this section).

(iii)(*a*) In any case when the deceased employee's interest in the employer's contributions for an annuity contract was forfeitable at the time the contributions were made but, at a subsequent date prior to his death, such interest changed to a nonforfeitable interest, then, for purposes of computing the ratio described in subdivision (i) of this subparagraph, the cash surrender value of the contract on the date of the change (except to the extent attributable to employee contributions) shall be considered as the amount contributed by the employer for the contract. In such a case, if only part of the deceased employee's interest in the annuity changed from a forfeitable to a nonforfeitable interest, then only the corresponding part of the cash surrender value of the contract on the date of the change shall be considered as the amount contributed by the employer for the contract. Similarly, if part of the deceased employee's interest in the annuity contract changed from a forfeitable to a nonforfeitable interest on a particular date and another part of his interest so changed on a subsequent date, it is necessary, in order to compute the amount contributed by the employer for the contract, to first determine (under the rules in the preceding sentence) the amount that is considered as the amount contributed by the employer with respect to each change, and then to add these amounts together. For purposes of computing the ratio described in subdivision (i) of this subparagraph in all of the above cases, the amount contributed by the employer that was excludable from the employee's gross income under paragraph (b) of §1.403(b)–1 is that amount which, under paragraph (b)(2) of such section, was considered as employer contributions and which, under such paragraph (b) of §1.403(b)–1, was excludable from the deceased employee's gross income for the taxable year in which the change occurred.

(*b*) This subdivision (iii) may be illustrated by the following examples:

*Example 1.* X Organization contributed $4,000 toward the purchase of an annuity contract for A, an employee who died in 1970. At the time they were made, A's interest in such contributions was forfeitable. A made no contributions toward the purchase of the annuity contract. On January 1, 1960, A's entire interest in the annuity contract changed to a nonforfeitable interest. At the time of such change, the cash surrender value of the contract was $5,000. For purposes of the ratio described in subdivision (i) of this subparagraph, the total amount contributed by X Organization for the annuity contract is

$5,000. If any part of such $5,000 was excludable under paragraph (b) of § 1.403(b)–1 from A's gross income for his taxable year in which the change occurred, the amount so excludable shall be considered as the amount contributed for the contract by the employer that was excludable from the employee's gross income under paragraph (b) of § 1.403(b)–1.

*Example 2.* Assume the same facts as in example (1) except that only one-half of A's interest in the annuity contract changed to a nonforfeitable interest on January 1, 1960, and that no other part of his interest so changed during his lifetime. For purposes of the ratio described in subdivision (i) of this subparagraph, the total amount contributed by X Organization for the annuity contract is $2,500 (½ of the cash surrender value of the annuity contract on the date of the change). To the extent such $2,500 was, under paragraph (b) of § 1.403(b)–1, excludable from A's gross income for the taxable year of the change, it is considered as the amount contributed by the employer that was excludable under paragraph (b) of § 1.403(b)–1.

*Example 3.* Assume the same facts as in example (1) except that one-half of A's interest in the annuity contract changed to a nonforfeitable interest on January 1, 1960, and the other half of his interest changed to a nonforfeitable interest on January 1, 1965. On January 1, 1965, the cash surrender value of the annuity contract was $6,000. For purposes of the ratio described in subdivision (i) of this subparagraph, the total amount contributed by X organization for the annuity contract is $5,500 (*i.e.*, ½ × $5,000 plus ½ × $6,000). The amount contributed by the employer that was excludable from A's gross income under paragraph (b) of § 1.403(b)–1 is an amount equal to the sum of the amount that was, under such paragraph, excludable from A's gross income for the taxable year during which the first change occurred and the amount that was, under such paragraph, excludable from A's gross income for the taxable year in which the second change occurred.

(iv) For purposes of this subparagraph, an annuity contract will be considered to have been purchased by an employer which is an organization referred to in section 170(b)(1)(A) (ii) or (vi) or which is a religious organization (other than a trust) and which is exempt from tax under section 501(a), if any of the contributions paid toward the purchase price of such contract by the employer were paid at a time when the employer was such an organization. Thus an annuity contract may be regarded as purchased by such an organization even though part of the organization's contributions for such annuity contract were paid at a time when the organization was not such an exempt organization.

(v) The application of this subparagraph may be illustrated by the following examples:

*Example 1.* The widow of A, a deceased employee, elects, under an annuity contract purchased for A by X Organization, to receive in a lump sum the present value of such annuity contract as of the date of A's death. Such present value is $6,000 and is received by the widow in a taxable year beginning after December 31, 1957. X Organization contributed $3,000 toward the purchase of the annuity contract and A contributed $2,000 toward such purchase. A's interest in X Organization's contributions was nonforfeitable at the time such contributions were made. Thus, just before his death, A's entire interest in the annuity contract was a nonforfeitable interest and, if he had retired at that time, he could have received the present value of $6,000. The whole amount of the $3,000 contributed by X Organization for the annuity contract was excludable from A's gross income under paragraph (b) of § 1.403(b)–1. This annuity contract was the only annuity contract purchased by X Organization for A and was not purchased as part of a qualified plan. However, all the contributions paid by X Organization were paid at a time when X Organization was an organization referred to in section 170(b)(1)(A)(ii) and exempt from tax under section 501(a). The amount that A's widow may exclude from gross income (assuming no other death benefits) is computed in the following manner:

| | |
|---|---|
| (*a*) Amount includible in gross income without regard to second sentence of section 101(b)(2)(B) ($6,000 minus $2,000 contributed for contract by A) | $4,000 |
| (*b*) Total employer contributions for the contract | $3,000 |
| (*c*) Amount of employer contributions for the contract that was excludable under paragraph (b) of § 1.403(b)–1 | $3,000 |
| (*d*) Percent of total employer contributions for the contract that were excludable under paragraph (b) of § 1.403(b)–1 ((*c*) ÷ (*b*)) | 100% |
| (*e*) Amount to which section 101(b) exclusion applies ((*d*) × (*a*)) | $4,000 |

*Example 2.* The facts are the same as in example (1) except that only $2,000 of X Organization's contributions for the annuity contract was excludable from A's gross income under paragraph (b) of § 1.403(b)–1 and that the remaining $1,000 was includible in A's gross income for the taxable years during which such amounts were contributed by X Organization. The amount that A's widow may exclude from gross income (assuming no other death benefits) is computed in the following manner:

| | |
|---|---|
| (*a*) Amount includible in gross income without regard to second sentence of section 101(b)(2)(B) ($6,000 minus $2,000 contributed for contract by A and $1,000 of X Organization's contributions includible in A's gross income) | $3,000 |
| (*b*) Total employer contributions for the contract | $3,000 |
| (*c*) Amount of employer contributions for the contract that was excludable under paragraph (b) of § 1.403(b)–1 | $2,000 |
| (*d*) Percent of total employer contributions for the contract that were excludable under paragraph (b) of § 1.403(b)–1 ((*c*) ÷ (*b*)) | 67% |
| (*e*) Amount to which section 101(b) exclusion applies ((*d*) × (*a*)) | $2,000 |

*Example 3.* The widow of B, a deceased employee, elects, under an annuity contract purchased for B by Y Organization, to receive in a lump sum the present value of such annuity contract as of the date of B's death. Such present value is $6,000 and is received by the widow in a taxable year beginning after December 31, 1957. Y Organization contributed $4,000 toward the purchase of the contract; whereas B made no contributions toward the purchase of the contract. This annuity contract was the only annuity contract purchased by Y Organization for B and was not purchased as part of a ''qualified'' plan. However, all the contributions paid by Y Organization were paid at a time when it was an organization referred to in section 170(b)(1)(A)(ii) and exempt from tax under section 501(a). B's interest in Y Organization's contributions was, at the time they were paid, forfeitable. However, prior to his death, one-half of B's interest in the annuity contract changed from a forfeitable to a nonforfeitable interest. Therefore, just before his death, B could have obtained $3,000 under the annuity contract if he had retired at that time. On the date of the change, the cash surrender value of the annuity contract was $5,000. As a result of the change, $1,500 was, under paragraph (b) of § 1.403(b)–1, excludable from B's gross income, and $600 was includible in his gross income for the taxable year in which the change occurred. Part of the value of the annuity contract on the date of the change was attributable to contributions made by Y Organization prior to January 1, 1958, and, consequently, was neither excludable from B's gross income under paragraph (b) of § 1.403(b)–1 nor includible in B's gross income (see paragraph (b) of § 1.403(d)–1). The amount that B's widow may exclude from gross income (assuming no other death benefits) is computed in the following manner:

| | |
|---|---|
| (*a*) Amount of ''total payment'' with respect to which A had a forfeitable right at time of death. (½×$6,000) | $3,000 |
| (*b*) Amount includible in gross income without regard to second sentence of section 101(b)(2)(B) (½×$6,000 less $600 includible in B's gross income for year when his rights changed to nonforfeitable rights) | $2,400 |
| (*c*) Total employer contributions for the contract (½ of cash surrender value of contract on date B's rights changed to nonforfeitable rights) | $2,500 |
| (*d*) Amount of employer contributions for the contract that was excludable under paragraph (b) of § 1.403(b)–1 | $1,500 |
| (*e*) Percent of total employer contributions for the contract that were excludable under paragraph (b) of § 1.403(b)–1 ((*d*) ÷ (*c*)) | 60% |
| (*f*) Amount to which section 101(b) exclusion applies by reason of the second sentence of section 101(b)(2)(B) ((*e*)×(*b*)) | $1,440 |
| (*g*) Total amount to which section 101(b) exclusion applies ((*a*)+(*f*)) | $4,440 |

(e) *Annuity payments.* (1) Where death benefits are paid in the form of annuity payments, the following rules shall govern for purposes of the exclusion provided in section 101(b):

(i) The exclusion from gross income provided by section 101(b) does not apply to amounts, paid as an annuity, with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living, or to amounts paid as an annuity in lieu thereof. See paragraph (d) of this section.

(ii) Under section 101(b)(2)(C), no exclusion is allowable for amounts received by a surviving annuitant under a joint and survivor's annuity contract if the annuity starting date (as defined in section 72(c)(4) and paragraph (b) of § 1.72–4) occurs before the death of the employee. If the annuity starting date occurs after the death of the employee, the joint and survivor's annuity contract shall be treated as an annuity to which section 101(b)(2)(D) applies. See subdivision (iii) of this subparagraph.

(iii)(*a*) Subject to the other limitations stated in section 101(b) and in this section (see section 101(b)(2)(D)), the amount to which the exclusion of section 101(b) shall apply, with respect to ''amounts received as an annuity'' (as defined in paragraph (b) of § 1.72–2) shall be the amount by which the present value of the annuity to be paid to the beneficiary, computed as of the date of the employee's death, exceeds the value (if any) of whichever of the following is the larger:

(*1*) Amounts contributed by the employee (determined in accordance with the provisions of section 72 and the regulations thereunder), or

(*2*) Amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living, or amounts paid in lieu thereof (see paragraph (d) of this section).

(*b*) The present value of an annuity (immediately before the death of the employee), to the employee, or (immediately after the death of the employee), to his estate or beneficiary, shall be determined as follows:

(*1*) In the case of an annuity paid by an insurance company or by an organization (other than an insurance company) regularly engaged in issuing annuity contracts with an insurance company as the coinsurer or reinsurer of the obligations under the contract, by use of the discount interest rates and mortality tables used by the insurance company involved to determine the installment benefits; and

(*2*) In the case of an annuity issued after November 23, 1984, to which paragraph (e)(1)(iii)(*b*)(*1*) of this section is not applicable, by use of the appropriate tables in §20.2031–7 of this chapter (Estate Tax Regulations).

(iv) Any amount subject to section 101(b)(2)(D) which is excludable under section 101(b) (see subdivision (iii) of this subparagraph) shall, for purposes of section 72, be treated as additional consideration paid by the employee. See paragraph (b) of §1.72–8.

(v) Where more than one beneficiary, or more than one death benefit, is involved, the exclusion provided by section 101(b) shall be apportioned to the various beneficiaries and benefits in accordance with the proportion that the present value of each benefit bears to the total present value of all the benefits.

(2) The application of the principles of this paragraph may be illustrated by the following examples:

*Example 1.* (i) A died on January 1, 1969. Under the plan of the X Corporation, W, who is the widow of employee A, and who is 55 years old at the time of A's death, is entitled to an immediate annuity of $2,000 per year during her life and C, the minor child of A, is entitled to receive $1,000 per year for 15 years. A made no contributions under the plan and died while still employed by the X Corporation. At the time of A's death, the amount in his account is $18,000. Under the terms of the plan, this amount would have been distributable to him on account of voluntary termination of employment, but would not have been payable after his death except in the form of the annuities just described. This amount, accordingly, constitutes a nonforfeitable interest in lieu of which the annuities are paid. The exclusion does not apply, except to the extent that the present value of the annuities exceeds $18,000, whether or not the plan is ''qualified'', since the total of the amount in A's account will not be paid within one taxable year of the distributees. See subparagraph (1)(i) of this paragraph.

(ii) The computation of the exclusion applicable to the interests of W and C (assuming that the payments will not be made by an insurance company or some other organization regularly engaged in issuing annuity contracts) is, by application of the tables in §20.2031–7 of this chapter (Estate Tax Regulations), as follows: The present value of W's interest is $26,243.60, determined by multiplying the annual payment of $2,000 by 13.1218 (the factor in Table I for a person aged 55); the present value of C's interest is $11,517.40, determined by multiplying the yearly payment of $1,000 by 11.5174 (the factor in Table II for payments for a term certain of 15 years). The present value of both annuities is $37,761 and (assuming no other death benefits are involved), the total amount excludable is $5,000, because the total present value of the annuities exceeds the employee's nonforfeitable interest by more than $5,000 ($37,761 minus $18,000 equal $19,761). The exclusion allocable to W's interest is $26,243.60/$37,761 times $5,000, or $3,474.96; the exclusion allocable to C's interest is $11,517.40/$37,761 times $5,000, or $1,525.04. That portion of the death benefit exclusion as so determined for each beneficiary is to be treated as consideration paid by the employee for purposes of section 72.

*Example 2.* The facts are the same as in example (1), except that the nonforfeitable interest of A, at the time of his death, amounted to $33,761. Since the present value of both annuities ($37,761) exceeds the value of such nonforfeitable interest by only $4,000, the latter amount is the total amount excludable from the gross income of the beneficiaries. This $4,000 exclusion is to be divided in the same proportions as those indicated in example (1). Thus, the exclusion allocable to W's interest is $26,243.60/$37,761 times $4,000, or $2,779.97; and the exclusion allocable to the interest of C is $11,517.40/$37,761 times $4,000, or $1,220.03. That portion of the death benefit exclusion as so determined for each beneficiary is to be treated as consideration paid by the employee for purposes of section 72.

(f) *Distributions on behalf of a self- employed individual.* (1) Under sections 401(c)(1) and 403(a)(3), certain self-employed individuals may be covered by a pension or profit-sharing plan described in section 401(a) and exempt under section 501(a) or under an annuity plan described in section 403(a). However, a payment pursuant to the provisions of any such plan by reason of the death of an individual who participated in such a plan as a self-employed individual immediately before his retirement or death to the beneficiary or estate of such individual does not qualify for the exclusion provided by section 101(b).

(2) The application of this paragraph may be illustrated by the following examples:

*Example 1.* From 1950 to 1965, A was an employee of B, a sole proprietor. In 1963, B established a qualified pension plan covering A and all other persons who had been employed by B for more than 3 years. In 1965, A acquired from B a 40-percent interest in the capital and profits of the business. A continued to participate in the pension plan as a self-employed individual. In 1970, A died and his widow, in compliance with one of the provisions of the pension plan, elected to receive all of the benefits accrued to A prior to his death in a lump-sum distribution. As A participated in the plan as a self-employed individual immediately prior to his death, A's widow may not exclude any portion of such distribution from her gross income under section 101(b).

*Example 2.* A, an attorney, is employed by the X Company in their legal department. He is covered by the pension plan that X has established for its employees. Under the terms of A's contract of employment with X, A is permitted to carry on the private practice of law in his off-duty hours. A establishes his own pension plan with respect to his earnings from his private practice. On A's death, his widow elected to receive a lump-sum distribution with respect to any benefits accrued to A under both X's pension plan and A's own pension plan. To the extent that such payment otherwise complies with the requirements of section 101(b), up to $5,000 of the amount paid by X may be excluded from her gross income. No part of the distribution from A's own pension plan may be excluded from her gross income under section 101(b) because A participated in the plan as a self-employed individual immediately before his death.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6722, 29 FR 5070, Apr. 14, 1964; T.D. 6783, 29 FR 18357, Dec. 24, 1964; T.D. 7352, 40 FR 16666, Apr. 14, 1975; T.D. 7428, 41 FR 34619, Aug. 16, 1976; T.D. 7836, 47 FR 42337, Sept. 27, 1982; T.D. 7955, 49 FR 19975, May 11, 1984; T.D. 8540, 59 FR 30102, 30103, June 10, 1994]

## § 1.101–3 Interest payments.

(a) *Applicability of section 101(c).* Section 101(c) provides that if any amount excluded from gross income by section 101(a) (relating to life insurance proceeds) or section 101(b) (relating to employees' death benefits) is held under an agreement to pay interest thereon, the interest payments shall be included in gross income. This provision applies to payments made (either by an insurer or by or on behalf of an employer) of interest earned on any amount so excluded from gross income which is held without substantial diminution of the principal amount during the period when such interest payments are being made or credited to the beneficiaries or estate of the insured or the employee. For example, if a monthly payment is $100, of which $99 represents interests and $1 represents diminution of the principal amount, the principal amount shall be considered held under an agreement to pay interest thereon and the interest payment shall be included in the gross income of the recipient. Section 101(c) applies whether the election to have an amount held under an agreement to pay interest thereon is made by the insured or employee or by his beneficiaries or estate, and whether or not an interest rate is explicitly stated in the agreement. Section 101(d), relating to the payment of life insurance proceeds at a date later than death, shall not apply to any amount to which section 101(c) applies. See section 101(d)(4). However, both section 101(c) and section 101(d) may apply to payments received under a single life insurance contract. For provisions relating to the application of this rule to payments received under a permanent life insurance policy with a family income rider attached, see paragraph (h) of § 1.101–4.

(b) *Determination of "present value".* For the purpose of determining whether section 101(c) or section 101(d) applies, the present value (at the time of the insured's death) of any amount which is to be paid at a date later than death shall be determined by the use of the interest rate and mortality tables used by the insurer in determining the size of the payments to be made.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6577, 26 FR 10127, Oct. 28, 1961]

### § 1.101–4 Payment of life insurance proceeds at a date later than death.

(a) *In general.* (1)(i) Section 101(d) states the provisions governing the exclusion from gross income of amounts (other than those to which section 101(c) applies) received under a life insurance contract and paid by reason of the death of the insured which are paid to a beneficiary on a date or dates later than the death of the insured. However, if the amounts payable as proceeds of life insurance to which section 101(a)(1) applies cannot in any event exceed the amount payable at the time of the insured's death, such amounts are fully excludable from the gross income of the recipient (or recipients) without regard to the actual time of payment and no further determination need be made under this section. Section 101(d)(1)(A) provides an exclusion from gross income of any amount determined by a proration, under applicable regulations, of ''an amount held by an insurer with respect to any beneficiary''. The quoted phrase is defined in section 101(d)(2). For the regulations governing the method of computation of this proration, see paragraphs (c) through (f) of this section. The prorated amounts are to be excluded from the gross income of the beneficiary regardless of the taxable year in which they are actually received (see example (2) of subparagraph (2) of this paragraph).

(ii) Section 101(d)(1)(B) provides an additional exclusion where life insurance proceeds are paid to the surviving spouse of an insured. For purposes of this exclusion, the term ''surviving spouse'' means the spouse of the insured as of the date of death, including a spouse legally separated, but not under a decree of absolute divorce (section 101(d)(3)). To the extent that the total payments, under one or more agreements, made in excess of the amounts determined by proration under section 101(d)(1)(A) do not exceed $1,000 in the taxable year of receipt, they shall be excluded from the gross income of the surviving spouse (whether or not payment of any part of such amounts is guaranteed by the insurer). Amounts excludable under section 101(d)(1)(B) are not ''prorated'' amounts.

(2) The principles of this paragraph may be illustrated by the following examples:

*Example 1.* A surviving spouse elects to receive all of the life insurance proceeds with respect to one insured, amounting to $150,000, in ten annual installments of $16,500 each, based on a certain guaranteed interest rate. The prorated amount is $15,000 ($150,000÷10). As the second payment, the insurer pays $17,850, which exceeds the guaranteed payment by $1,350 as the result of earnings of the insurer in excess of those required to pay the guaranteed installments. The surviving spouse shall include $1,850 in gross income and exclude $16,000—determined in the following manner:

| | |
|---|---|
| Fixed payment (including guaranteed interest) | $16,500 |
| Excess interest | 1,350 |
| Total payment | 17,850 |
| Prorated amount | 15,000 |
| Excess over prorated amount | 2,850 |
| Annual excess over prorated amount excludable under section 101(d)(1)(B) | 1,000 |
| Amount includible in gross income | 1,850 |

*Example 2.* Assume the same facts as in example (1), except that the third and fourth annual installments, totalling $33,000 (2×$16,500), are received in a single subsequent taxable year of the surviving spouse. The prorated amount of $15,000 of each annual installment, totalling $30,000, shall be excluded even though the spouse receives more than one annual installment in the single subsequent taxable year. However, the surviving spouse is entitled to only one exclusion of $1,000 under section 101(d)(1)(B) for each taxable year of receipt. The surviving spouse shall include $2,000 in her gross income for the taxable year with respect to the above installment payments ($33,000 less the sum of $30,000 plus $1,000).

*Example 3.* Assume the same facts as in example (1), except that the surviving spouse dies before receiving all ten annual installments and the remaining installments are paid to her estate or beneficiary. In such a case, $15,000 of each installment would continue to be excludable from the gross income of the recipient, but any amounts received in excess thereof would be fully includible.

(b) *Amount held by an insurer.* (1) For the purpose of the proration referred to in section 101(d)(1), an ''amount held by an insurer with respect to any beneficiary'' means an amount equal to the present value to such beneficiary (as of the date of death of the insured) of an agreement by the insurer under a life insurance policy (whether as an option or otherwise) to pay such beneficiary an amount or amounts at a date or dates later than the death of the insured (section 101(d)(2)). The present value of such agreement is to be computed as if the agreement under the life insurance policy had been entered into on the date of death of the insured, except that such value shall be determined by the use of the mortality table and interest rate used by the insurer in calculating payments to be made to the beneficiary under such agreement. Where an insurance policy provides an option for the payment of a specific amount upon the death of the insured in full discharge of the contract, such lump sum is the amount held by the insurer with respect to all beneficiaries (or their beneficiaries) under the contract. See, however, paragraph (e) of this section.

(2) In the case of two or more beneficiaries, the ''amount held by the insurer'' with respect to each beneficiary depends on the relationship of the different benefits payable to such beneficiaries. Where the amounts payable to two or more beneficiaries are independent of each other, the ''amount held by the insurer with respect to each beneficiary'' shall be determined and prorated over the periods involved independently. Thus, if a certain amount per month is to be paid to A for his life, and, concurrently, another amount per month is to be paid to B for his life, the ''amount held by the insurer'' shall be determined and prorated for both A and B independently, but the aggregate shall not exceed the total present value of such payments to both. On the other hand, if the obligation to pay B was contingent on his surviving A, the ''amount held by the insurer'' shall be considered an amount held with respect to both beneficiaries simultaneously. Furthermore, it is immaterial whether B is a named beneficiary or merely the ultimate recipient of payments for a term of years. For the special rules governing the computation of the proration of the ''amount held by an insurer'' in determining amounts excludable under the provisions of section 101(d), see paragraphs (c) to (f), inclusive, of this section.

(3) Notwithstanding any other provision of this section, if the policy was transferred for a valuable consideration, the total ''amount held by an insurer'' cannot exceed the sum of the consideration paid plus any premiums or other consideration paid subsequent to the transfer if the provisions of section 101(a)(2) and paragraph (b) of §1.101–1 limit the excludability of the proceeds to such total.

(c) *Treatment of payments for life to a sole beneficiary*. If the contract provides for the payment of a specified lump sum, but, pursuant to an agreement between the beneficiary and the insurer, payments are to be made during the life of the beneficiary in lieu of such lump sum, the lump sum shall be divided by the life expectancy of the beneficiary determined in accordance with the mortality table used by the insurer in determining the benefits to be paid. However, if payments are to be made to the estate or beneficiary of the primary beneficiary in the event that the primary beneficiary dies before receiving a certain number of payments or a specified total amount, such lump sum shall be reduced by the present value (at the time of the insured's death) of amounts which may be paid by reason of the guarantee, in accordance with the provisions of paragraph (e) of this section, before making this calculation. To the extent that payments received in each taxable year do not exceed the amount found from the above calculation, they are ''prorated amounts'' of the ''amount held by an insurer'' and are excludable from the gross income of the beneficiary without regard to whether he lives beyond the life expectancy used in making the calculation. If the contract in question does not provide for the payment of a specific lump sum upon the death of the insured as one of the alternative methods of payment, the present value (at the time of the death of the insured) of the payments to be made the beneficiary, determined in accordance with the interest rate and mortality table used by the insurer in determining the benefits to be paid, shall be used in the above calculation in lieu of a lump sum.

(d) *Treatment of payments to two or more beneficiaries*—(1) *Unrelated payments.* If payments are to be made to two or more beneficiaries, but the payments to be made to each are to be made without regard to whether or not payments are made or continue to be made to the other beneficiaries, the present value (at the time of the insured's death) of such payments to each beneficiary shall be determined independently for each such beneficiary. The present value so determined shall then be divided by the term for which the payments are to be made. If the payments are to be made for the life of the beneficiary, the divisor shall be the life expectancy of the beneficiary. To the extent that payments received by a beneficiary do not exceed the amount found from the above calculation, they are ''prorated amounts'' of the ''amount held by an insurer'' with respect to such beneficiary and are excludable from the gross income of the beneficiary without regard to whether he lives beyond any life expectancy used in making the calculation. For the purpose of the calculation described above, both the ''present value'' of the payments to be made periodically and the ''life expectancy'' of the beneficiary shall be determined in accordance with the interest rate and mortality table used by the insurer in determining the benefits to be paid. If payments are to be made to the estate or beneficiary of a primary beneficiary in the event that such beneficiary dies before receiving a certain number of payments or a specified total amount, the ''present value'' of payments to such beneficiary shall not include the present value (at the time of the insured's death) of amounts which may be paid by reason of such a guarantee. See paragraph (e) of this section.

(2) *Related payments.* If payments to be made to two or more beneficiaries are in the nature of a joint and survivor annuity (as described in paragraph (b) of §1.72–5), the present value (at the time of the insured's death) of the payments to be made to all such beneficiaries shall be divided by the life expectancy of such beneficiaries as a group. To the extent that the payments received by a beneficiary do not exceed the amount found from the above calculation, they are ''prorated amounts'' of the ''amount held by an insurer'' with respect to such beneficiary and are excludable from the gross income of the beneficiary without regard to whether all the beneficiaries involved live beyond the life expectancy used in making the calculation. For the purpose of the calculation described above, both the ''present value'' of the payments to be made periodically and the ''life expectancy'' of all the beneficiaries as a group shall be determined in accordance with the interest rate and mortality table used by the insurer in determining the benefits to be paid. If the contract provides that certain payments are to be made in the event that all the beneficiaries of the group die before a specified number of payments or a specified total amount is received by them, the present value of payments to be made to the group shall not include the present value (at the time of the insured's death) of amounts which may be paid by reason of such a guarantee. See paragraph (e) of this section.

(3) *Payments to secondary beneficiaries.* Payments made by reason of the death of a beneficiary (or beneficiaries) under a contract providing that such payments shall be made in the event that the beneficiary (or beneficiaries) die before receiving a specified number of payments or a specified total amount shall be excluded from the gross income of the recipient to the extent that such payments are made solely by reason of such guarantee.

(e) *Treatment of present value of guaranteed payments.* In the case of payments which are to be made for a life or lives under a contract providing that further amounts shall be paid upon the death of the primary beneficiary (or beneficiaries) in the event that such beneficiary (or beneficiaries) die before receiving a specified number of payments or a specified total amount, the present value (at the time of the insured's death) of all payments to be made under the contract shall not include, for purposes of prorating the amount held by the insurer, the present value of the payments which may be made to the estate or beneficiary of the primary beneficiary. In such a case, any lump sum amount used to measure the value of the amount held by an insurer with respect to the primary beneficiary must be reduced by the value at the time of the insured's death of any amounts which may be paid by reason of the guarantee provided for a secondary beneficiary or the estate of the primary beneficiary before prorating such lump sum over the life or lives of the primary beneficiaries. Such present value (of the guaranteed payment) shall be determined by the use of the interest rate and mortality tables used by the insurer in determining the benefits to be paid.

(f) *Treatment of payments not paid periodically*. Payments made to beneficiaries other than periodically shall be included in the gross income of the recipients, but only to the extent that they exceed amounts payable at the time of the death of the insured to each such beneficiary or, where no such amounts are specified, the present value of such payments at that time.

(g) *Examples*. The principles of this section may be illustrated by the following examples:

*Example 1*. A life insurance policy provides for the payment of $20,000 in a lump sum to the beneficiary at the death of the insured. Upon the death of the insured, the beneficiary elects an option to leave the proceeds with the company for five years and then receive payment of $24,000, having no claim of right to any part of such sum before the entire five years have passed. Upon the payment of the larger sum, $24,000, the beneficiary shall include $4,000 in gross income and exclude $20,000 therefrom. If it is assumed that the same insurer has determined the benefits to be paid, the same result would obtain if no lump sum amount were provided for at the death of the insured and the beneficiary were to be paid $24,000 five years later. In neither of these cases would the surviving spouse be able to exclude any additional amount from gross income since both cases involve an amount held by an insurer under an agreement to pay interest thereon to which section 101(c) applies, rather than an amount to be paid periodically after the death of the insured to which section 101(d) applies.

*Example 2*. A life insurance policy provides that $1,200 per year shall be paid the sole beneficiary (other than a surviving spouse) until a fund of $20,000 and interest which accrues on the remaining balance is exhausted. A guaranteed rate of interest is specified, but excess interest may be credited according to the earnings of the insurer. Assuming that the fund will be exhausted in 20 years if only the guaranteed interest is actually credited, the beneficiary shall exclude $1,000 of each installment received ($20,000 divided by 20) and any installments received, whether by the beneficiary or his estate or beneficiary, in excess of 20 shall be fully included in the gross income of the recipient. If, instead, the excess interest were to be paid each year, any portion of each installment representing an excess over $1,000 would be fully includible in the recipient's gross income. Thus, if an installment of $1,350 were received, $350 of it would be included in gross income.

*Example 3*. Assume that the sole life insurance policy of a decedent provides only for the payment of $5,000 per year for the life of his surviving spouse, beginning with the insured's death. If the present value of the proceeds, determined by reference to the interest rate and the mortality table used by the insurance company, is $60,000, and such beneficiary's life expectancy is 20 years, $3,000 of each $5,000 payment ($60,000 divided by 20) is excludable as the prorated portion of the ''amount held by an insurer''. For each taxable year in which a payment is made, an additional $1,000 is excludable from the gross income of the surviving spouse. Hence, if she receives only one $5,000 payment in her taxable year, only $1,000 is includible in her gross income in that year with respect to such payment ($5,000 less the total amount excludable, $4,000). Assuming that the policy also provides for payments of $2,000 per year for 10 years to the daughter of the insured, the present value of the payments to the daughter is to be computed separately for the purpose of determining the excludable portion of each payment to her. Assuming that such present value is $15,000, $1,500 of each payment of $2,000 received by the daughter is excludable from her gross income ($15,000 divided by 10). The remaining $500 shall be included in the gross income of the daughter.

*Example 4*. Beneficiaries A and B, neither of whom is the surviving spouse of the insured, are each to receive annual payments of $1,800 for each of their respective lives upon the death of the insured. The contract does not provide for payments to be made in any other manner. Assuming that the present value of the payments to be made to A, whose life expectancy according to the insurer's mortality table is 30 years, is $36,000, A shall exclude $1,200 of each payment received ($36,000 divided by 30). Assuming that the present value of the payments to be made to B, whose life expectancy according to the insurer's mortality table is 20 years, is $27,000, B shall exclude $1,350 of each payment received ($27,000 divided by 20).

*Example 5.* A life insurance policy provides for the payment of $76,500 in a lump sum to the beneficiary, A, at the death of the insured. Upon the insured's death, however, A selects an option for the payment of $2,000 per year for her life and for the same amount to be paid after her death to B, her daughter, for her life. Assuming that since A is 51 years of age and her daughter is 28 years of age, the insurer determined the amount of the payments by reference to a mortality table under which the life expectancy for the lives of both A and B, joint and survivor, is 51 years, $1,500 of each $2,000 payment to either A or B ($76,500 divided by 51, or $1,500) shall be excluded from the gross income of the recipient. However, if A is the surviving spouse of the insured and no other contracts of insurance whose proceeds are to be paid to her at a date later than death are involved, A shall exclude the entire payment of $2,000 in any taxable year in which she receives but one such payment because of the additional exclusion under section 101(d)(1)(B).

*Example 6.* Beneficiaries A and B, neither of whom is the surviving spouse of the insured, are each to receive annual payments of $1,800 for each of their respective lives upon the death of the insured, but after the death of either, the survivor is to receive the payments formerly made to the deceased beneficiary until the survivor dies. Assuming that the life expectancy, joint and survivor, of A and B in accordance with the mortality table used by the insurer is 32 years and assuming that the total present value of the benefits to both (determined in accordance with the interest rate used by the insurer) is $80,000, A and B shall each exclude $1,250 of each installment of $1,800 ($80,000 divided by the life expectancy, 32, multiplied by the fraction of the annual payment payable to each, one-half) until the death of either. Thereafter, the survivor shall exclude $2,500 of each installment of $3,600 ($80,000 divided by 32).

*Example 7.* A life insurance policy provides for the payment of $75,000 in a lump sum to the beneficiary, A, at the death of the insured. A, upon the insured's death, however, selects an option for the payment of $4,000 per year for life, with a guarantee that any part of the $75,000 lump sum not paid to A before his death shall be paid to B (or his estate). A's beneficiary. Assuming that, under the criteria used by the insurer in determining the benefits to be paid, the present value of the guaranteed amount to B is $13,500 and that A's life expectancy is 25 years, the lump sum shall be reduced by the present value of the guarantee to B ($75,000 less $13,500, or $61,500) and divided by A's life expectancy ($61,500 divided by 25, or $2,460). Hence, $2,460 of each $4,000 payment is excludable from A's gross income. If A is the surviving spouse of the insured and no other contracts of insurance whose proceeds are to be paid to her at a date later than death are involved, A shall exclude $3,460 of each $4,000 payment from gross income in any taxable year in which but one such payment is received. Under these facts, if any amount is paid to B by reason of the fact that A dies before receiving a total of $75,000, the residue of the lump sum paid to B shall be excluded from B's gross income since it is wholly in lieu of the present value of such guarantee plus the present value of the payments to be made to the first beneficiary, and is therefore entirely an "amount held by an insurer" paid at a date later than death (see paragraph (d)(3) of this section).

*Example 8.* Assume that an insurance policy does not provide for the payment of a lump sum, but provides for the payment of $1,200 per year for a beneficiary's life upon the death of the insured, and also provides that if ten payments are not made to the beneficiary before death a secondary beneficiary (whether named by the insured or by the first beneficiary) shall receive the remainder of the ten payments in similar installments. If, according to the criteria used by the insurance company in determining the benefits, the present value of the payments to the first beneficiary is $12,000 and the life expectancy of such beneficiary is 15 years, $800 of each payment received by the first beneficiary is excludable from gross income. Assuming that the same figures obtain even though the payments are to be made at the rate of $100 per month, the yearly exclusion remains the same unless more or less than twelve months' installments are received by the beneficiary in a particular taxable year. In such a case two-thirds of the total received in the particular taxable year with respect to such beneficiary shall be excluded from gross income. Under either of the above alternatives, any amount received by the second beneficiary by reason of the guarantee of ten payments is fully excludable from the beneficiary's gross income since it is wholly in lieu of the present value of such guarantee plus the present value of the payments to be made to the first beneficiary and is therefore entirely an "amount held by an insurer" paid at a date later than death (see paragraph (d)(3) of this section).

(h) *Applicability of both section 101(c) and 101(d) to payments under a single life insurance contract*—(1) *In general.* Section 101(d) shall not apply to interest payments on any amount held by an insurer under an agreement to pay interest thereon (see sections 101(c) and 101(d)(4) and §1.101–3). On the other hand, both section 101(c) and section 101(d) may be applicable to payments received under a single life insurance contract, if such payments consist both of interest on an amount held by an insurer under an agreement to pay interest thereon and of amounts held by the insurer and paid on a date or dates later than the death of the insured. One instance when both section 101(c) and section 101(d) may be applicable to payments received under a single life insurance contract is in the case of a permanent life insurance policy with a family income rider attached. A typical family income rider is one which provides additional term insurance coverage for a specified number of years from the register date of the basic policy. Under the policy with such a rider, if the insured dies at any time during the term period, the beneficiary is entitled to receive (i) monthly payments of a specified amount commencing as of the date of death and continuing for the balance of the term period, and (ii) a lump sum payment of the proceeds under the basic policy to be paid at the end of the term period. If the insured dies after the expiration of the term period, the beneficiary receives only the proceeds under the basic policy. If the insured dies before the expiration of the term period, part of each monthly payment received by the beneficiary during the term period consists of interest on the proceeds of the basic policy (such proceeds being retained by the insurer until the end of the term period). The remaining part consists of an installment (principal plus interest) of the proceeds of the terms insurance purchased under the family income rider. The amount of term insurance which is provided under the family income rider is, therefore, that amount which, at the date of the insured's death, will provide proceeds sufficient to fund such remaining part of each monthly payment. Since the proceeds under the basic policy are held by the insurer until the end of the term period, that portion of each monthly payment which consists of interest on such proceeds is interest on an amount held by an insurer under an agreement to pay interest thereon and is includible in gross income under section 101(c). On the other hand, since the remaining portion of each monthly payment consists of an installment payment (principal plus interest) of the proceeds of the term insurance, it is a payment of an amount held by the insurer and paid on a date later than the death of the insured to which section 101(d) and this section applies (including the $1,000 exclusion allowed the surviving spouse under section 101(d)(1)(B)). The proceeds of the basic policy, when received in a lump sum at the end of the term period, are excludable from gross income under section 101(a).

(2) *Example of tax treatment of amounts received under a family income rider*. The following example illustrates the application of the principles contained in subparagraph (1) of this paragraph to payments received under a permanent life insurance policy with a family income rider attached:

*Example*. The sole life insurance policy of the insured provides for the payment of $100,000 to the beneficiary (the insured's spouse) on his death. In addition, there is attached to the policy a family income rider which provides that, if the insured dies before the 20th anniversary of the basic policy, the beneficiary shall receive (i) monthly payments of $1,000 commencing on the date of the insured's death and ending with the payment prior to the 20th anniversary of the basic policy, and (ii) a single payment of $100,000 payable on the 20th anniversary of the basic policy. On the date of the insured's death, the beneficiary (surviving spouse of the insured) is entitled to 36 monthly payments of $1,000 and to the single payment of $100,000 on the 20th anniversary of the basic policy. The value of the proceeds of the term insurance at the date of the insured's death is $28,409.00 (the present value of the portion of the monthly payments to which section 101(d) applies computed on the basis that the interest rate used by the insurer in determining the benefits to be paid under the contract is 2¼ percent). The amount of each monthly payment of $1,000 which is includible in the beneficiary's gross income is determined in the following manner:

| | |
|---|---|
| (*a*) Total amount of monthly payment | $1,000.00 |
| (*b*) Amount includible in gross income under section 101(c) as interest on the $100,000 proceeds under the basic policy held by the insurer until 20th anniversary of the basic policy (computed on the basis that the interest rate used by the insurer in determining the benefits to be paid under the contract is 2¼ percent) | 185.00 |
| (*c*) Amount to which section 101(d) applies ((a) minus (b)) | 815.00 |
| (*d*) Amount excludable from gross income under section 101(d) ($28,409÷36) | 789.14 |
| (*e*) Amount includible in gross income under section 101(d) without taking into account the $1,000 exclusion allowed the beneficiary as the surviving spouse ((c) minus (d)) | 25.86 |

The beneficiary, as the surviving spouse of the insured, is entitled to exclude the amounts otherwise includible in gross income under section 101(d) (item (*e*)) to the extent such amounts do not exceed $1,000 in the taxable year of receipt. This exclusion is not applicable, however, with respect to the amount of each payment which is includible in gross income under section 101(c) (item (*b*)). In this example, therefore, the beneficiary must include $185 of each monthly payment in gross income (amount includible under section 101(c)), but may exclude the $25.86 which is otherwise includible under section 101(d). The payment of $100,000 which is payable to the beneficiary on the 20th anniversary of the basic policy will be entirely excludable from gross income under section 101(a).

(3) *Limitation on amount considered to be an ''amount held by an insurer''.* See paragraph (b)(3) of this section for a limitation on the amount which shall be considered an ''amount held by an insurer'' in the case of proceeds of life insurance which are paid subsequent to the transfer of the policy for a valuable consideration.

(4) *Effective date.* The provisions of this paragraph are applicable only with respect to amounts received during taxable years beginning after October 28, 1961, irrespective of the date of the death of the insured.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6577, 26 FR 10127, Oct. 28, 1961; 26 FR 10275, Nov. 2, 1961]

### § 1.101–5 Alimony, etc., payments.

Proceeds of life insurance policies paid by reason of the death of the insured to his separated wife, or payment excludable as death benefits under section 101(b) paid to a deceased employee's separated wife, if paid to discharge legal obligations imposed by a decree of divorce or separate maintenance, by a written separation agreement executed after August 16, 1954, or by a decree of support entered after March 1, 1954, shall be included in the gross income of the separated wife if section 71 or 682 is applicable to the payments made. For definition of ''wife'', see section 7701(a)(17) and the regulations thereunder.

### § 1.101–6 Effective date.

(a) Except as otherwise provided in paragraph (h)(4) of § 1.101–4, the provisions of section 101 of the Internal Revenue Code of 1954 and §§ 1.101–1, 1.101–2, 1.101–3, 1.101–4, and 1.101–5 are applicable only with respect to amounts received by reason of the death of an insured or an employee occurring after August 16, 1954. In the case of such amounts, these sections are applicable even though the receipt of such amounts occurred in a taxable year beginning before January 1, 1954, to which the Internal Revenue Code of 1939 applies.

(b) Section 22(b)(1) of the Internal Revenue Code of 1939 and the regulations pertaining thereto shall apply to amounts received by reason of the death of an insured or an employee occurring before August 17, 1954, regardless of the date of receipt.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6577, 26 FR 10128, Oct. 28, 1961]

### § 1.101–7 Mortality table used to determine exclusion for deferred payments of life insurance proceeds.

(a) *Mortality table.* Notwithstanding any provision of § 1.101–4 that otherwise would permit the use of a mortality table not described in this section, the mortality table set forth in § 1.72–7(c)(1) must be used to determine—

(1) The amount held by an insurer with respect to a beneficiary for purposes of section 101(d)(2) and § 1.101–4; and

(2) The period or periods with respect to which payments are to be made for purposes of section 101(d)(1) and § 1.101–4.

(b) *Examples.* The principles of this section may be illustrated by the following examples:

*Example 1.* A life insurance policy provides only for the payment of $5,000 per year for the life of the beneficiary, A, beginning with the insured's death. If A is 59 years of age at the time of the insured's death, the period with respect to which the payments are to be made is 25 years. This period is determined by using the mortality table set forth in § 1.72–7(c)(1), and is shown in Table V of § 1.72–9 (which contains life expectancy tables determined using this mortality table). If the present value of the proceeds, determined by reference to the interest rate used by the insurance company and the mortality table set forth in § 1.72–7(c)(1), is $75,000, $3,000 of each

$5,000 payment ($75,000 divided by 25) is excluded from the gross income of A.

*Example 2.* A life insurance policy provides for the payment of $82,500 in a lump sum to the beneficiary, A, at the death of the insured. Upon the insured's death, however, A selects an option for the payment of $2,000 per year for life and for the same amount to be paid after A's death to B for B's life. If A is 51 years of age and B is 28 years of age at the death of the insured, the period with respect to which the payments are to be made is 55 years. This period is determined by using the mortality table set forth in §1.72–7(c)(1), and is shown in Table VI of §1.72–9 (which contains life expectancy tables determined using this mortality table). Accordingly $1,500 of each $2,000 payment ($82,500 divided by 55) is excluded from the gross income of the recipient.

(c) *Effective date.* This section applies to amounts received with respect to deaths occurring after October 22, 1986, in taxable years ending after October 22, 1986.

[T.D. 8161, 52 FR 35415, Sept. 21, 1987. Redesignated and amended by T.D. 8272, 54 FR 47980, Nov. 20, 1989]

### § 1.102–1 Gifts and inheritances.

(a) *General rule.* Property received as a gift, or received under a will or under statutes of descent and distribution, is not includible in gross income, although the income from such property is includible in gross income. An amount of principal paid under a marriage settlement is a gift. However, see section 71 and the regulations thereunder for rules relating to alimony or allowances paid upon divorce or separation. Section 102 does not apply to prizes and awards (see section 74 and §1.74–1) nor to scholarships and fellowship grants (see section 117 and the regulations thereunder).

(b) *Income from gifts and inheritances.* The income from any property received as a gift, or under a will or statute of descent and distribution shall not be excluded from gross income under paragraph (a) of this section.

(c) *Gifts and inheritances of income.* If the gift, bequest, devise, or inheritance is of income from property, it shall not be excluded from gross income under paragraph (a) of this section. Section 102 provides a special rule for the treatment of certain gifts, bequests, devises, or inheritances which by their terms are to be paid, credited, or distributed at intervals. Except as provided in section 663(a)(1) and paragraph (d) of this section, to the extent any such gift, bequest, devise, or inheritance is paid, credited, or to be distributed out of income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property. Section 102 provides the same treatment for amounts of income from property which is paid, credited, or to be distributed under a gift or bequest whether the gift or bequest is in terms of a right to payments at intervals (regardless of income) or is in terms of a right to income. To the extent the amounts in either case are paid, credited, or to be distributed at intervals out of income, they are not to be excluded under section 102 from the taxpayer's gross income.

(d) *Effect of Subchapter J.* Any amount required to be included in the gross income of a beneficiary under sections 652, 662, or 668 shall be treated for purposes of this section as a gift, bequest, devise, or inheritance of income from property. On the other hand, any amount excluded from the gross income of a beneficiary under section 663(a)(1) shall be treated for purposes of this section as property acquired by gift, bequest, devise, or inheritance.

(e) *Income taxed to grantor or assignor.* Section 102 is not intended to tax a donee upon the same income which is taxed to the grantor of a trust or assignor of income under section 61 or sections 671 through 677, inclusive.

### § 1.103–1 Interest upon obligations of a State, territory, etc.

(a) Interest upon obligations of a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof (hereinafter collectively or individually referred to as ''State or local governmental unit'') is not includable in gross income, except as provided under section 103 (c) and (d) and the regulations thereunder.

(b) Obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations are the obligations of such a unit. However, section 103(a)(1) and this section do not apply to industrial development bonds except as otherwise provided in section 103(c). See section 103(c) and §§ 1.103–7 through 1.103–12 for the rules concerning interest paid on industrial development bonds. See section 103(d) for rules concerning interest paid on arbitrage bonds. Certificates issued by a political subdivision for public improvements (such as sewers, sidewalks, streets, etc.) which are evidence of special assessments against specific property, which assessments become a lien against such property and which the political subdivision is required to enforce, are, for purposes of this section, obligations of the political subdivision even though the obligations are to be satisfied out of special funds and not out of general funds or taxes. The term ''political subdivision'', for purposes of this section denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any State or local governmental unit may or may not, for purposes of this section, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of any such unit.

[T.D. 7199, 37 FR 15486, Aug. 3, 1972]

### § 1.103–2 Dividends from shares and stock of Federal agencies or instrumentalities.

(a) *Issued before March 28, 1942.* (1) Section 26 of the Federal Farm Loan Act of July 17, 1916 (12 U.S.C. 931), provides that Federal land banks and Federal land bank associations, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from taxation, except taxes upon real estate. Section 7 of the Federal Reserve Act of December 23, 1913 (12 U.S.C. 531), provides that Federal reserve banks, including the capital stock and surplus therein and the income derived therefrom, shall be exempt from taxation, except taxes upon real estate. Section 13 of the Federal Home Loan Bank Act (12 U.S.C. 1433) provides that the Federal Home Loan Bank including its franchise, its capital, reserves, and surplus, its advances, and its income shall be exempt from all taxation, except taxes upon real estate. Section 5(h) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(h)) provides that shares of Federal savings and loan associations shall, both as to their value and the income therefrom, be exempt from all taxation (except surtaxes, estate, inheritance, and gift taxes) imposed by the United States. Under the above-mentioned provisions, income consisting of dividends on stock of Federal land banks, Federal land bank associations, Federal home loan banks, and Federal reserve banks is not, in the case of stock issued before March 28, 1942, includable in gross income. Income consisting of dividends on share accounts of Federal savings and loan associations is includable in gross income but, in the case of shares issued before March 28, 1942, is not subject to the normal tax on income. For taxability of such income in the case of such stock or shares issued on or after March 28, 1942, see section 6 of the Public Debt Act of 1942 (31 U.S.C. 742a) and paragraph (b) of this section. For the time at which a stock or share is issued within the meaning of this section, see paragraph (b) of this section.

(2) Regardless of the exemption from income tax of dividends paid on the stock of Federal reserve banks, dividends paid by member banks are treated like dividends of ordinary corporations.

(3) Dividends on the stock of the central bank for cooperatives, the production credit corporations, production credit associations, and banks for cooperatives, organized under the provisions of the Farm Credit Act of 1933 (12 U.S.C. 1138), constitute income to the recipients, subject to both the normal tax and surtax (see section 63 of the Farm Credit Act of 1933 (12 U.S.C. 1138c)).

(b) *Issued on or after March 28, 1942.* (1) By virtue of the provisions of section 6 of the Public Debt Act of 1942 (31 U.S.C. 742a), the tax exemption provisions set forth in paragraph (a) of this section with respect to income consisting of dividends on stock of the Federal land banks, Federal land bank associations, and Federal reserve banks, or on share accounts of Federal savings and loan associations, are not applicable in the case of dividends on such stock or shares issued on or after March 28, 1942.

(2) For the purposes of this section, a stock or share is deemed to be issued at the time and to the extent that payment therefor is made to the agency or instrumentality. The date of issuance of the certificate or other evidence of ownership of such stock or share is not determinative if payment is made at an earlier or later date. Where old stock is retired in exchange for new stock of a different character or preference, the new stock shall be deemed to have been issued at the time of the exchange rather than when the old stock was paid for. These rules may be illustrated by the following examples:

*Example 1.* A, the owner of an investment share account, consisting of 10 shares, in a Federal savings and loan association, has a single certificate issued before March 28, 1942, evidencing such ownership. In order that A may dispose of half of such shares, the association at his request issues, after March 27, 1942, two 5-share certificates in substitution for the 10-share certificate. The shares evidenced by the two new certificates are deemed to have been issued before March 28, 1942, the shares having been paid for before such date.

*Example 2.* The X Bank, a member of a Federal reserve bank, owns 50 shares of Federal reserve bank stock, evidenced by a single stock certificate issued before March 28, 1942. On December 31, 1942, the X Bank reduces the amount of its capital stock, as a result of which it is required to reduce the amount of its Federal reserve bank stock to 40 shares. It surrenders the 50-share certificate to the Federal reserve bank and receives a new 40-share certificate. The 40 shares evidenced by such certificate are deemed to have been issued before March 28, 1942. On December 31, 1943, the X Bank increases the amount of its capital stock, as a result of which it is required to purchase 10 additional shares of the Federal reserve bank stock. The Federal reserve bank issues a 10-share certificate evidencing ownership of the new shares. Of the 50 shares then owned by the X Bank, 40 were issued prior to March 28, 1942, and 10 were issued after March 27, 1942.

*Example 3.* A, the owner of a savings share account in the amount of $100 in a Federal savings and loan association, has a passbook containing a certificate issued prior to March 28, 1942, evidencing such ownership. Subsequent to March 27, 1942, A deposits $10,000 in the account. With respect to the $10,000 deposit, the share is deemed to have been issued after March 27, 1942.

### § 1.103–3 Interest upon notes secured by mortgages executed to Federal agencies or instrumentalities.

Section 26 of the Federal Farm Loan Act (12 U.S.C. 931), and section 210 of such act, as added by section 2 of the act of March 4, 1923 (12 U.S.C. 1111), provide that first mortgages executed to Federal land banks, joint-stock land banks, or Federal intermediate credit banks, and the income derived therefrom, shall be exempt from taxation. Accordingly, income consisting of interest on promissory notes held by such banks and secured by such first mortgages is not subject to the income tax.

### § 1.103–4 Interest upon United States obligations.

(a) *Issued before March 1, 1941.* (1) Interest upon obligations of the United States issued on or before September 1, 1917, is exempt from tax. In the case of obligations issued by the United States after September 1, 1917, and in the case of obligations of a corporation organized under act of Congress, if such corporation is an instrumentality of the United States, the interest is exempt from tax only if and to the extent provided in the acts authorizing the issue thereof, as amended and supplemented.

(2) Interest on Treasury bonds issued before March 1, 1941, is exempt from Federal income taxes except surtaxes imposed upon the income or profits of individuals, associations, or corporations. However, interest on an aggregate of not exceeding $5,000 principal amount of such bonds is also exempt from surtaxes. Interest in excess of the interest on an aggregate of not exceeding $5,000 principal amount of such bonds is subject to surtax and must be included in gross income.

(3) Interest credited to postal savings accounts upon moneys deposited before March 1, 1941, in postal savings banks is wholly exempt from income tax.

(b) *Issued on or after March 1, 1941.* (1) Under the provisions of sections 4 and 5 of the Public Debt Act of 1941 (31 U.S.C. 742a), interest upon obligations issued on or after March 1, 1941, by the United States, or any agency or instrumentality thereof, shall not have any exemption, as such, from Federal income tax except in respect of any such obligations which the Federal Maritime Board and Maritime Administration (formerly United States Maritime Commission) or the Federal Housing Administration has, before March 1, 1941, contracted to issue at a future date. The interest on such obligations so contracted to be issued shall bear such tax-exemption privileges as were at the time of such contract provided in the law authorizing their issuance. For the purposes hereof, under section 4(a) of the Public Debt Act of 1941, a Territory and a possession of the United States (or any political subdivisions thereof), and the District of Columbia, and any agency or instrumentality of any one or more of the foregoing, shall not be considered as an agency or instrumentality of the United States.

(2) In the case of obligations issued as the result of a refunding operation, as, for example, where a corporation exchanges bonds for previously issued bonds, the refunding obligations are deemed, for the purposes of this section, to have been issued at the time of the exchange rather than at the time the original bonds were issued.

**§ 1.103–5 Treasury bond exemption in the case of trusts or partnerships.**

(a) When the income of a trust is taxable to beneficiaries, as in the case of a trust the income of which is to be distributed to the beneficiaries currently, each beneficiary is entitled to exemption as if he owned directly a proportionate part of the Treasury bonds held in trust. When, on the other hand, income is taxable to the trustee, as in the case of a trust the income of which is accumulated for the benefit of unborn or unascertained persons, the trust, as the owner of the bonds held in trust, is entitled to the exemption on account of such ownership. In general, see sections 652(b) and 662(b) and the regulations thereunder.

(b) As the income of a partnership is taxable to the individual partners, each partner is entitled to exemption as if he owned directly a proportionate part of the bonds held by the partnership. For rules relating to partially tax-exempt interest see section 702(a)(7) and the regulations thereunder.

**§ 1.103–6 Interest upon United States obligations in the case of nonresident aliens and foreign corporations, not engaged in business in the United States.**

By virtue of section 4 of the Victory Liberty Loan Act of March 3, 1919 (31 U.S.C. 750), amending section 3 of the Fourth Liberty Bond Act of July 9, 1918 (31 U.S.C. 750), the interest received on and after March 3, 1919, on bonds, notes, and certificates of indebtedness of the United States while beneficially owned by a nonresident alien individual, or a foreign corporation, partnership, or association, if such individual, corporation, partnership, or association is not engaged in business in the United States, is exempt from income taxes. Such exemption applies only to such bonds, notes, or certificates as have been issued before March 1, 1941. Interest derived by a nonresident alien individual, or by a foreign corporation, partnership, or association on such bonds, notes, or certificates issued on or after March 1, 1941, is subject to tax as in the case of taxpayers generally as provided in paragraph (b) of § 1.103–4.

**§ 1.103–7 Industrial development bonds.**

(a) *In general.* Under section 103(c)(1) and this section, an industrial development bond issued after April 30, 1968, shall be treated as an obligation not described in section 103(a)(1) and § 1.103–1. Accordingly, interest paid on such a bond is includable in gross income unless the bond was issued by a State, or local governmental unit to finance certain exempt facilities (see section 103(c)(4) and § 1.103–8), to finance an industrial park (see section 103(c)(5) and § 1.103–9), or as part of an exempt small issue (see section 103(c)(6) and § 1.103–10). For applicable rules when an industrial development bond is held by a substantial user (or a person related to a substantial user) of such an exempt facility, or an industrial park, or a facility financed with the proceeds of such an exempt small issue, see section 103(c)(7) and § 1.103–11. See also § 1.103–12 for the transitional provisions concerning the interest paid on certain industrial development bonds issued before January 1, 1969, and certain other industrial development bonds. Even if section 103(c) does not prevent a bond from being treated as an obligation described in section 103(a)(1) and § 1.103–1, such bond shall nevertheless be treated as an obligation which is not described in section 103(a)(1) and § 1.103–1 if under section 103(d) it is an arbitrage bond. For purposes of section 103(c), the term ''issue'' includes a single obligation such as a single note issued in connection with a bank loan as well as a series of notes or bonds.

(b) *Industrial development bonds*—(1) *Definition.* For purposes of this section, the term ''industrial development bond'' means any obligation—

(i) Which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person (as defined in subparagraph (2) of this paragraph), and

(ii) The payment of the principal or interest on which, under the terms of such obligation or any underlying arrangement (as described in subparagraph (4) of this paragraph), is in whole or in major part (*i.e.*, major portion)—

(*a*) Secured by any interest in property used or to be used in a trade or business,

(*b*) Secured by any interest in payments in respect of property used or to be used in a trade or business, or

(*c*) To be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

See subparagraphs (3) and (4) of this paragraph for the trade or business test and the security interest test respectively. See § 1.103–8(a)(6) to determine the amount of proceeds of an issue for which the amount payable during each annual period over the term of the issue is less than the amount of interest accruing thereon in such period, e.g., in the case of an issue sold by the issuer for less than its face amount.

(2) *Exempt person.* The term ''exempt person'' means a governmental unit as defined in this subparagraph, or an organization which is described in section 501(c)(3) and this subparagraph and is exempt from taxation under section 501(a). For purposes of this subparagraph, the term ''governmental unit'' means a State or local governmental unit (as defined in § 1.103–1). For purposes of this subparagraph, the term ''governmental unit'' also includes the United States of America (or an agency or instrumentality of the United States of America), but only in the case of obligations (i) issued on or before August 3, 1972, or (ii) issued after August 3, 1972, with respect to which a bond resolution or any other official action was taken and in reliance on such action either (*a*) construction of such facility to be financed with such obligations commenced or (*b*) a binding contract was entered into, or an irrevocable bid was submitted, prior to August 3, 1972, or (iii) issued after August 3, 1972, with respect to a program approved by Congress prior to such date but only if (*a*) a portion of such program has been financed by obligations issued prior to such date, to which section 103(a) applied pursuant to a ruling issued by the Commissioner or his delegate prior to such date and (*b*) construction of one or more facilities comprising a part of such program commenced prior to such date. For purposes of this subparagraph, a tax-exempt organization is an exempt person only with respect to a trade or business it carries on which is not an unrelated trade or business. Whether a particular trade or business carried on by a tax-exempt organization is an unrelated trade or business is determined by applying the rules of section 513(a) (relating to general rule for unrelated trade or business) and the regulations thereunder to the tax-exempt organization without regard to whether the organization is an organization subject to the tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations).

(3) *Trade or business test.* (i) The trade or business test relates to the use of the proceeds of a bond issue. The test is met if all or a major portion of the proceeds of a bond issue is used in a trade or business carried on by a nonexempt person. For example, if all or a major portion of the proceeds of a bond issue

is to be loaned to one or more private business users, or is to be used to acquire, construct, or reconstruct facilities to be leased or sold to such private business users, and such proceeds or facilities are to be used in trades or businesses carried on by them, such proceeds are to be used in a trade or business carried on by persons who are not exempt persons, and the debt obligations comprising the bond issue satisfy the trade or business test. If, however, less than a major portion of the proceeds of an issue is to be loaned to nonexempt persons or is to be used to acquire or construct facilities which will be used in a trade or business carried on by a nonexempt person, the debt obligations will not be industrial development bonds. Also, when publicly-owned facilities which are intended for general public use, such as toll roads or bridges, are constructed with the proceeds of a bond issue and used by nonexempt persons in their trades or businesses on the same basis as other members of the public, such use does not constitute a use in the trade or business of a nonexempt person for purposes of the trade or business test.

(ii) In determining whether a debt obligation meets the trade or business test, the indirect, as well as the direct, use of the proceeds is to be taken into account. For example, the debt obligations comprising a bond issue do not fail to satisfy the trade or business test merely because the State or local governmental unit uses the proceeds to engage in a series of financing transactions for property to be used by private business users in trades or businesses carried on by them. Similarly, if such proceeds are to be used to construct facilities to be leased or sold to any nonexempt person for use in a trade or business it carries on, such proceeds are to be used in a trade or business carried on by a nonexempt person and the debt obligations comprising such issue satisfy the trade or business test. If such proceeds are to be used to construct facilities to be leased or sold to an exempt person who will, in turn, lease or sell the facilities to a nonexempt person for use in a trade or business, such proceeds are to be used in a trade or business carried on by a nonexempt person and the debt obligations comprising such issue satisfy the trade or business test. In addition, proceeds will be treated as being used in the trade or business of a nonexempt person in situations involving other arrangements, whether in a single transaction or in a series of transactions, whereby a nonexempt person uses property acquired with the proceeds of a bond issue in its trade or business.

(iii) The use of more than 25 percent of the proceeds of an issue of obligations in the trades or businesses of nonexempt persons will constitute the use of a major portion of such proceeds in such manner. In the case of the direct or indirect use of the proceeds of an issue of obligations or the direct or indirect use of a facility constructed, reconstructed, or acquired with such proceeds, the use by all nonexempt persons in their trades or businesses must be aggregated to determine whether the trade or business test is satisfied. If more than 25 percent of the proceeds of a bond issue is used in the trades or businesses of nonexempt persons, the trade or business test is satisfied. For special rules with respect to the acquisition of the output of facilities, see subparagraph (5) of this paragraph.

(4) *Security interest test.* The security interest test relates to the nature of the security for, and the source of, the payment of either the principal or interest on a bond issue. The nature of the security for, and the source of, the payment may be determined from the terms of the bond indenture or on the basis of an underlying arrangement. An underlying arrangement to provide security for, or the source of, the payment of the principal or interest on an obligation may result from separate agreements between the parties or may be determined on the basis of all the facts and circumstances surrounding the issuance of the bonds. The property which is the security for, or the source of, the payment of either the principal or interest on a debt obligation need not be property acquired with bond proceeds. The security interest test is satisfied if, for example, a debt obligation is secured by unimproved land or investment securities used, directly or indirectly, in any trade or business carried on by any private business user. A pledge of the full faith and credit of a

State or local governmental unit will not prevent a debt obligation from otherwise satisfying the security interest test. For example, if the payment of either the principal or interest on a bond issue is secured by both a pledge of the full faith and credit of a State or local governmental unit and any interest in property used or to be used in a trade or business, the bond issue satisfies the security interest test. For rules with respect to the acquisition of the output of facilities see subparagraph (5) of this paragraph.

(5) *Trade or business test and security interest test with respect to certain output contracts.* (i) The use by one or more nonexempt persons of a major portion of the subparagraph (5) output of facilities such as electric energy, gas, or water facilities constructed, reconstructed, or acquired with the proceeds of an issue satisfies the trade or business test and the security interest test if such use has the effect of transferring to nonexempt persons the benefits of ownership of such facilities, and the burdens of paying the debt service on governmental obligations used directly or indirectly to finance such facilities, so as to constitute the indirect use by them of a major portion of such proceeds. Such benefits and burdens are transferred and a major portion of the proceeds of an issue is used indirectly by the users of the subparagraph (5) output of such a facility which is owned and operated by an exempt person where—

(*a*)(*1*) One nonexempt person agrees pursuant to a contract to take, or to take or pay for, a major portion (more than 25 percent) of the subparagraph (5) output (within the meaning of subdivision (ii) of this subparagraph) of such a facility (whether or not conditional upon the production of such output) or (*2*) two or more nonexempt persons, each of which pays annually a guaranteed minimum payment exceeding 3 percent of the average annual debt service with respect to the obligations in question, agree, pursuant to contracts, to take, or to take or pay for, a major portion (more than 25 percent) of the subparagraph (5) output of such a facility (whether or not conditioned upon the production of such output), and

(*b*) Payment made or to be made with respect to such contract or contracts by such nonexempt person or persons exceeds a major part (more than 25 percent) of the total debt service with respect to such issue of obligations.

(ii) For purposes of this subparagraph—

(*a*) Where a contract described in subdivision (i) of this subparagraph may be extended by the issuer of obligations described therein, the term of the contract shall be considered to include the period for which such contract may be so extended.

(*b*) The subparagraph (5) output of a facility shall be determined by multiplying the number of units produced or to be produced by the facility in 1 year by the number of years in the contract term of the issue of obligations issued to provide such facility. The number of units produced or to be produced by a facility in 1 year shall be determined by reference to its nameplate capacity (or where there is no nameplate capacity, its maximum capacity) without any reduction for reserves or other unutilized capacity. The contract term of an issue begins on the date the output of a facility is first taken, pursuant to a take or a take or pay contract, by a nonexempt person and ends on the latest maturity date of any obligation of the issue (determined without regard to any optional redemption dates). If, however, on or before the date of issue of a prior issue of governmental obligations issued to provide a facility, the issuer makes a commitment in the bond indenture or related document to refinance such prior issue with one or more subsequent issues of governmental obligations, then the contract term of the issue shall be determined with regard to the latest redemption date of any obligation of the last such refinancing issue with respect to such facility (determined without regard to any optional redemption dates). Where it appears that the term of an issue (or the terms of two or more issues) is extended for purposes of extending the contract term of an issue and thereby increasing the subparagraph (5) output of the facility provided by such issue, the subparagraph (5) output of such facility shall be determined by the Commissioner without regard to the provisions of this subdivision (*b*).

(*c*) The total debt service with respect to an issue of obligations shall be the total dollar amount (excluding any penalties) payable with respect to such issue over its entire term. The entire term of an issue begins on its date of issue and ends on the latest maturity date of any obligation of the issue (determined without regard to any optional redemption dates). If, however, on or before the date of issue of a prior issue of governmental obligations the issuer makes a commitment in the bond indenture or related document to refinance such prior issue with one or more subsequent issues of governmental obligations, the entire term of the issue shall be determined with regard to the latest redemption date of any obligation of the last such refinancing issue (determined without regard to any optional redemption dates).

(*d*) Two or more nonexempt persons who are related persons (within the meaning of section 103(c)(6)(C)) shall be treated as one nonexempt person.

(c) *Examples*. The application of the rules contained in section 103(c) (2) and (3) and paragraph (b) of this section are illustrated by the following examples:

*Example 1.* State A and corporation X enter into an arrangement under which A is to provide a factory which X will lease for 20 years. The arrangement provides (1) that A will issue $10 million of bonds, (2) that the proceeds of the bond issue will be used to purchase land and to construct and equip a factory in accordance with X's specifications, (3) that X will rent the facility (land, factory, and equipment) for 20 years at an annual rental equal to the amount necessary to amortize the principal and pay the interest on the outstanding bonds, and (4) that such payments by X and the facility itself will be the security for the bonds. The bonds are industrial development bonds since they are part of an issue of obligations (1) all of the proceeds of which are to be used (by purchasing land and constructing and equipping the factory) in a trade or business by a nonexempt person, and (2) the payment of the principal and interest on which is secured by the facility and payments to be made with respect thereto.

*Example 2.* The facts are the same as in example (1) except that (1) X will purchase the facility, and (2) annual payments equal to the amount necessary to amortize the principal and pay the interest on the outstanding bonds will be made by X. The bonds are industrial development bonds for the reasons set forth in example (1).

*Example 3.* State B and corporation X enter into an arrangement under which B is to loan $10 million to X. The arrangement provides (1) that B will issue $10 million of bonds, (2) that the proceeds of the bond issue will be loaned to X to provide additional working capital and to finance the acquisition of certain new machinery, (3) that X will repay the loan in annual installments equal to the amount necessary to amortize the principal and pay the interest on the outstanding bonds, and (4) that the payments on the loan and the machinery will be the security for only the payment of the principal on the bonds. The bonds are industrial development bonds since they are part of an issue of obligations (1) all of the proceeds of which are to be used in a trade or business by a nonexempt person, and (2) the payment of the principal on which is secured by payments to be made in respect of property to be used in a trade or business. The result would be the same if only the payment of the interest on the bonds were secured by payments on the loan and machinery.

*Example 4.* The facts are the same as in example (1), (2), or (3) except that the annual payments required to be made by corporation X exceed the amount necessary to amortize the principal and pay the interest on the outstanding bonds. The bonds are industrial development bonds for the reasons set forth in such examples. The fact that corporation X is required to pay an amount in excess of the amount necessary to pay the principal and interest on the bonds does not affect their status as industrial development bonds. Similarly, if the annual payments required to be made by corporation X were sufficient to pay only a major portion of either the principal or the interest on the outstanding bonds, the bonds would be industrial development bonds for the reasons set forth in such examples.

*Example 5.* The facts are the same as in example (1), (2), (3), or (4) except that the issuer is a political subdivision which has taxing power and the bonds are general obligation bonds. Since both the trade or business and the security interest tests are met, the bonds are industrial development bonds notwithstanding the fact that they constitute an unconditional obligation of the issuer payable from its general revenues.

*Example 6.* (a) State C issues its general obligation bonds to purchase land and construct a hotel for use by the general public (*i.e.*, tourists, visitors, travelers on business, etc.). The bond indenture provides (1) that C will own and operate the project for the period required to redeem the bonds, and (2) that the project itself and the revenues derived therefrom are the security for the bonds. The bonds are not industrial development bonds since (1) the proceeds are to be used by an exempt person in a trade or business carried on by such person, and (2) a major portion of such proceeds is not to be used, directly or indirectly, in a trade or business carried on by a nonexempt person. Use of the hotel by hotel guests who are travelling in connection with trades or businesses of nonexempt persons is not an indirect use of the hotel by such nonexempt persons for purposes of section 103(c).

(b) The facts are the same as in paragraph (a) of this example except that corporation Y enters into a long-term agreement with C that Y will rent more than one-fourth of the rooms on an annual basis for a period approximately equal to one half of the term of the bonds. The bonds are industrial development bonds because (1) a major portion of the proceeds used to construct the hotel is to be used in the trade or business of corporation Y (a nonexempt person) and (2) a major portion of the principal and interest on such issue will be derived from payments in respect of the property used in the trade or business of Y.

*Example 7.* (a) State D and corporation Y enter into an agreement under which Y will lease for 20 years three floors of a 12- story office building to be constructed by D on land which it will acquire. D will occupy the grade floor and the remaining eight floors of the building. The portion of the costs of acquiring the land and constructing the building which are allocated to the space to be leased by Y is not in excess of 25 percent of the total costs of acquiring the land and constructing the building. Such costs, whether attributable to the acquisition of land or the construction of the building, were allocated to leased space in the same proportion that the reasonable rental value of such leased space bears to the reasonable rental value of the entire building. From the facts and circumstances presented, it is determined that such allocation was reasonable. The arrangement between D and Y provides that D will issue $10 million of bonds, that the proceeds of the bond issue will be used to purchase land and construct an office building, that Y will lease the designated floor space for 20 years at its reasonable rental value, and that such rental payments and the building itself shall be security for the bonds. The bonds are not industrial development bonds since a major portion of the proceeds is not to be used, directly or indirectly, in the trade or business of a nonexempt person.

(b) The facts are the same as in paragraph (a) of this example except that corporation Y will lease four floors, and the costs allocated to these floors are in excess of 25 percent of D's investment in the land and building. The bonds are industrial development bonds because (1) a major portion of the building is to be used in the trade or business of a nonexempt person, and (2) a major portion of the principal and interest on such issue is secured by the rental payments on the building.

*Example 8.* The facts are the same as in paragraph (b) of example (7) except that, instead of leasing any space to corporation Y, State D will lease the four floors to numerous unrelated private business users to be used in their trades or businesses. No lease will have a term exceeding 2 years. A major portion of the principal and interest will be paid from the revenues that D will derive from such leases. The fact that the activities of D, an exempt person, may amount to a trade or business of leasing property is not material, and the bonds are industrial development bonds for the reasons set forth in paragraph (b) of example (7). The result would be the same in the case of long-term leases.

*Example 9.* State E issues its obligations to finance the construction of dormitories for educational institution Z which is an organization described in section 501(c)(3) and exempt from tax under section 501(a). The dormitories are to be owned and operated by Z and their operation does not constitute an unrelated trade or business. The bonds are not industrial development bonds since the proceeds are to be used by an exempt person in a trade or business carried on by such person which is not an unrelated trade or business, as determined by applying section 513(a) to Z.

*Example 10.* State F issues its obligations to finance the construction of a toll road and the cost of erecting related facilities such as gasoline service stations and restaurants. Such related facilities represent less than 25 percent of the total cost of the project and are to be leased or sold to nonexempt persons. The toll road is to be owned and operated by F. The revenues from the toll road and from the rental of related facilities are the security for the bonds. The bonds are not industrial development bonds since a major portion of the proceeds is not to be used, directly or indirectly, in the trades or businesses of nonexempt persons. The fact that vehicles owned by nonexempt persons engaged in their trades or businesses may use the road in common with, or as a part of, the general public is not material.

*Example 11.* City G issues its obligations to finance the construction of a municipal auditorium which it will own and operate. The use of the auditorium will be open to anyone who wishes to use it for a short period of time on a rate-scale basis. The rights of such a user are only those of a transient occupant rather than the full legal possessory interests of a lessee. It is anticipated that the auditorium will be used by schools, church groups, and fraternities, and numerous commercial organizations. The revenues from the rentals of the auditorium and the auditorium building itself will be the security for the bonds. The bonds are not industrial development bonds because such use is not a use in the trade or business of a nonexempt person.

*Example 12.* The facts are the same as in example (11) except that one nonexempt person will have a 20-year rental agreement providing for exclusive use of the entire auditorium for more than 3 months of each year at a rental comparable to that charged short-term users. The bonds are industrial development bonds since such use is a use in the trade or business of a nonexempt person and, therefore, a major portion of the proceeds of the issue will be used in the trade or business of a nonexempt person and a major portion of the principal or interest on such issue will be secured by a facility used in such trade or business and by payments with respect to such facility.

*Example 13.* In order to construct an electric generating facility of a size sufficient to take advantage of the economies of scale: (1) City H will issue $50 million of its 25-year bonds and Z (a privately owned electric utility) will use $100 million of its funds for construction of a facility they will jointly own as tenants in common. (2) Each of the participants will share in the ownership, output, and operating expenses of the facility in proportion to its contribution to the cost of the facility, that is, one-third by H and two-thirds by Z. (3) H's bonds will be secured by H's ownership in the facility and by revenues to be derived from the sale of H's share of the annual output of the facility. (4) Because H will need only 50 percent of its share of the annual output of the facility, it agrees to sell to Z 25 percent of its share of such annual output for a period of 20 years pursuant to a contract under which Z agrees to take or pay for such power in all events. The facility will begin operation, and Z will begin to receive power, 4 years after the City H obligations are issued. The contract term of the issue will, therefore, be 21 years. (5) H also agrees to sell the remaining 25 percent of its share of the annual output to numerous other private utilities under a prevailing rate schedule including demand charges. (6) No contracts will be executed obligating any person other than Z to purchase any specified amount of the power for any specified period of time and no one such person (other than Z) will pay a demand charge or other minimum payment under conditions which, under paragraph (b)(5) of this section, result in a transfer of the benefits of ownership and the burdens of paying the debt service on obligations used directly or indirectly to provide such facilities. The bonds are not industrial development bonds because H's one-third interest in the facility (financed with bond proceeds) shall be treated as a separate property interest and, although 25 percent of H's interest in the annual output of the facility will be used directly or indirectly in the trade or business of Z, a nonexempt person, under the rule of paragraph (b)(5) of this section, such portion constitutes less than a major portion of the subparagraph (5) output of the facility. If more than 25 percent of the subparagraph (5) output of the facility were to be sold to Z pursuant to the take or pay contract, the bonds would be industrial development bonds since they would be secured by H's ownership in the facility and revenues therefrom, and under the rules of paragraph (b)(5) of this section a major portion of the proceeds of the bond issue would be used in the trade or business of Z, a nonexempt person.

*Example 14.* J, a political subdivision of a State, will issue several series of bonds from time to time and will use the proceeds to rehabilitate urban areas. More than 25 percent of the proceeds of each issue will be used for the rehabilitation and construction of buildings which will be leased or sold to nonexempt persons for use in their trades or businesses. There is no limitation either on the number of issues or the aggregate amount of bonds which may be outstanding. No group of bondholders has any legal claim prior to any other bondholders or creditors with respect to specific revenues of J, and there is no arrangement whereby revenues from a particular project are paid into a trust or constructive trust, or sinking fund, or are otherwise segregated or restricted for the benefit of any group of bondholders. There is, however, an unconditional obligation by J to pay the principal and interest on each issue of bonds. Further, it is apparent that J requires the revenues from the lease or sale of buildings to nonexempt persons in order to pay in full the principal and interest on the bonds in question. The bonds are industrial development bonds because a major portion of the proceeds will be used in the trades or businesses of nonexempt persons and, pursuant to an underlying arrangement, payment of the principal and interest is, in major part, to be derived from payments in respect of property or borrowed money used in the trades or businesses of nonexempt persons.

*Example 15.* Power Authority K, a political subdivision created by the legislature in State X to own and operate certain power generating facilities, sells all of the power from its existing facilities to four private utility systems under contracts executed in 1970, whereby such four systems are required to take or pay for specified portions of the total power output until the year 2000. Currently, existing facilities supply all of the present needs of the four utility systems but their future power requirements are expected to increase substantially. K issues 20-year general obligation bonds to construct a large nuclear generating facility. A fifth private utility system contracts with K to take or pay for 30 percent of the subparagraph (5) output of the new facility. The balance of the power output of the new facility will be available for sale as required, but initially it is not anticipated there will be any need for such power. The revenues from the contract with the fifth private utility system will be sufficient to pay less than 25 percent of the principal or interest on the bonds. The balance, which will exceed 25 percent of the principal or interest on such bonds, will be paid from revenues from the contracts with the four systems from sale of power produced by the old facilities. The bonds will be industrial development bonds because a major portion of the proceeds will be used in the trade or business of a nonexempt person, and payment of the principal and interest, pursuant to an underlying arrangement, will be derived in major part from payments in respect of property used in the trades or businesses of nonexempt persons.

(d) *Certain refunding issues*—(1) *General rule.* In the case of an issue of obligations issued to refund the outstanding face amount of an issue of obligations, the proceeds of the refunding issue will be considered to be used for the purpose for which the proceeds of the issue to be refunded were used. The rules of this subparagraph shall apply regardless of the date of issuance of the issue to be refunded and shall apply to refunding issues to be issued to refund prior refunding issues.

(2) *Obligations issued prior to effective date.* In the case of an issue of obligations issued to refund the outstanding face amount of an issue of obligations issued on or before April 30, 1968 (or before January 1, 1969, if the transitional rules of § 1.103–12 are applicable) which would have been industrial development bonds within the meaning of section 103(c)(2) had they been issued after such date, the refunding issue shall not be considered to be an issue of industrial development bonds if it does not make funds available for any purpose other than the debt service on the obligations. For rules as to arbitrage bonds, see section 103(d).

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example 1.* In 1969, State A issued $20 million of 20-year revenue bonds the proceeds of which were used to contruct a sports facility which qualifies as an exempt facility described in section 103(c)(4)(B) and paragraph (c) of § 1.103–8. The sports facility will be owned and operated by X, a nonexempt person, for the use of the general public. In 1975, A issues $15 million of revenue bonds in order to refund the outstanding face amount of the 1969 issue. Since the proceeds of the 1969 issue were used for an exempt facility, the proceeds of the 1975 refunding issue will be considered to be used for the same purposes and section 103(c)(1) shall not apply to the 1975 refunding issue. The result would have been the same if the original issue had been issued in 1965. For rules as to a refunding obligation held by substantial users of facilities constructed with the proceeds of the issue refunded, see section 103(c)(7) and § 1.103–11.

*Example 2.* In 1967, prior to the effective date of section 103(c), city B issued $10 million of revenue bonds the proceeds of which were used to construct a manufacturing facility for corporation Y, a nonexempt person. Lease payments by Y were security for the bonds. In 1975, B issue $7 million of revenue bonds in order to retire the outstanding face amount of the 1967 issue. The interest rate of the 1975 issue is one and one-half percentage points lower than the interest rate on the 1967 issue. Both issues sold at par. All of the terms of the 1975 issue are the same as the terms of the 1967 issue with the exception of the interest rate. The 1975 refunding issue will not be considered to be an issue of industrial development bonds since the refunding issue will not make funds available for any purpose other than the debt service on the outstanding obligations.

*Example 3.* The facts are the same as in example (2) except that the interest rate on the refunding issue is the same as the interest rate on the issue to be refunded. Assume further that city B issued the 1975 refunding issue in order to extend the term of the obligations issued in 1967 as the result of its inability to pay such obligations due to insufficient revenues. The results will be the same as in example (2) for the reasons stated therein.

[T.D. 7199, 37 FR 15486, Aug. 3, 1972; 37 FR 16177, Aug. 11, 1972, as amended by T.D. 7869, 48 FR 1708, Jan. 14, 1983]

### § 1.103–8 Interest on bonds to finance certain exempt facilities.

(a) *In general*—(1) *General rule.* (i) Under section 103(b)(4), interest paid on an issue of obligations issued by a State or local governmental unit (as defined in § 1.103–1) is not includable in gross income if substantially all of the proceeds of such issue is to be used to provide one or more of the exempt facilities listed in subparagraphs (A) through (J) of section 103(b)(4) and in this section. However, interest on an obligation of such issue is includable in gross income if the obligation is held by a substantial user or a related person (as described in section 103(b)(13) and §1.103–11). If substantially all of the proceeds of a bond issue is to be used to provide such exempt facilities, the debt obligations are treated as obligations described in section 103(a)(1) and §1.103–1 even though such obligations are industrial development bonds as defined in section 103(b)(2) and §1.103–7. Substantially all of the proceeds of an issue of governmental obligations are used to provide an exempt facility if 90 percent or more of such proceeds are so used. For purposes of this ''substantially all'' test, two rules apply. First, proceeds are reduced by amounts properly allocable on a pro rata basis between providing the exempt facility and other uses of the proceeds. Second, amounts used to provide an exempt facility include amounts paid or incurred which are chargeable to the facility's capital account or would be so chargeable either with a proper election by a taxpayer (for example, under section 266) or but for a proper election by a taxpayer to deduct such amounts. In the event the amount payable with respect to an issue during each annual period over its term is less than the amount of interest accruing thereon in such period, e.g., in the case of an issue sold by the issuer for less than its face amount, see paragraph (a)(6) of this section to determine the amount of proceeds of the issue.

(ii) The provisions of subdivision (i) of this subparagraph shall also apply to an issue of obligations substantially all of the proceeds of which is to be used to provide exempt facilities described in this section and for either or both of the following purposes: (*a*) To acquire or develop land as the site for an industrial park described in section 103(b)(5) and §1.103–9, (*b*) to provide facilities to be used by an exempt person.

(iii) Section 103(b)(4) only becomes applicable where the bond issue meets both the trade or business and the security interest tests so that obligations are industrial development bonds within the meaning of section 103(b)(2). For rules as to exempt facilities including property functionally related and subordinate to such facilities, see subparagraph (3) of this paragraph. For rules with respect to the ultimate use of proceeds of obligations, see subparagraph (4) of this paragraph. For rules which limit the application of the provisions of this section see subparagraph (5) of this paragraph. For the interrelationship of the rules provided in this section and the exemption for certain small issues provided in section 103(b)(6), see §1.103–10.

(2) *Public use requirement.* To qualify under section 103(b)(4) and this section as an exempt facility, a facility must serve or be available on a regular basis for general public use, or be a part of a facility so used, as contrasted with similar types of facilities which are constructed for the exclusive use of a limited number of nonexempt persons in their trades or businesses. For example, a private dock or wharf owned by or leased to, and serving only a single manufacturing plant would not qualify as a facility for general public use, but a hangar or repair facility at a municipal airport, or a dock or a wharf, would qualify even if it is owned by, or leased or permanently assigned to, a nonexempt person provided that such nonexempt person directly serves the general public, such as a common passenger carrier or freight carrier. Similarly, an airport owned or operated by a nonexempt person for general public use is a facility for public use, as is a dock or wharf which is a part of a public port. However, a landing strip which, by reason of a formal or informal agreement or by reason of geographic location, will not be available for general public use does not satisfy the public use requirement. Sewage or solid waste disposal facilities and air or water pollution control facilities, described in sections 103(b)(4) (E) and (F) and paragraphs (f) and (g) of this section, will be treated in all events as serving a general public use although they may be part of a nonpublic facility such as a manufacturing facility used in the trade or business of a nonexempt user.

(3) *Functionally related and subordinate.* An exempt facility includes any land, building, or other property functionally related and subordinate to

such facility. Property is not functionally related and subordinate to a facility if it is not of a character and size commensurate with the character and size of such facility. Since substantially all of the proceeds of a bond issue must be used for the exempt facility (or for any combination of exempt facilities, industrial parks, and facilities to be used by exempt persons), including property functionally related and subordinate thereto, an insubstantial amount of the proceeds of a bond issue may be used for facilities which are neither exempt facilities (or a combination of exempt facilities, industrial parks and facilities to be used by exempt persons) nor functionally related and subordinate to exempt facilities. Thus, for example, where substantially all of the proceeds of an urban redevelopment bond issue are to be used by a State urban redevelopment agency for residential real property for family units within the meaning of section 103(b)(4)(A) and paragraph (b) of this section, an insubstantial amount may be used for an industrial or commercial project or for any other purpose that is not functionally related and subordinate to the residential real property for family units.

(4) *Ultimate use of proceeds.* The question whether substantially all of the proceeds of an issue of obligations are to be used to provide one or more of the exempt facilities listed in subparagraphs (A) through (J) of section 103(b)(4) and in this section is to be resolved by reference to the ultimate use of such proceeds. For example, such proceeds will be treated as used to provide residential rental property whether the State or local governmental unit (i) constructs such property and leases or sells it to any person who is not an exempt person for use in such person's trade or business of leasing such property; (ii) lends the proceeds to any such person for such purpose; or (iii) lends the proceeds to banks or other financial institutions in order to increase the supply of funds for mortgage lending under conditions requiring such banks or other financial institutions to use such proceeds only for further lending for residential rental property.

(5) *Limitation.* (i) A facility qualifies under this section only to the extent that there is a valid reimbursement allocation under §1.150–2 with respect to expenditures that are incurred before the issue date of the bonds to provide the facility and that are to be paid with the proceeds of the issue. In addition, if the original use of the facility begins before the issue date of the bonds, the facility does not qualify under this section if any person that was a substantial user of the facility at any time during the 5-year period before the issue date or any related person to that user receives (directly or indirectly) 5 percent or more of the proceeds of the issue for the user's interest in the facility and is a substantial user of the facility at any time during the 5-year period after the issue date, unless—

(A) An official intent for the facility is adopted under §1.150–2 within 60 days after the date on which acquisition, construction, or reconstruction of that facility commenced; and

(B) For an acquisition, no person that is a substantial user or related person after the acquisition date was also a substantial user more than 60 days before the date on which the official intent was adopted.

(ii) A facility, the original use of which commences (or the acquisition of which occurs) on or after the issue date of bonds to provide that facility, qualifies under this section only to the extent that an official intent for the facility is adopted under §1.150–2 by the issuer of the bonds within 60 days after the commencement of the construction, reconstruction, or acquisition of that facility. Temporary construction or other financing of a facility prior to the issuance of the bonds to provide that facility will not cause that facility to be one that does not qualify under this paragraph (a)(5)(ii).

(iii) For purposes of paragraph (a)(5)(i) of this section, *substantial user* has the meaning used in section 147(a)(1), *related person* has the meaning used in section 144(a)(3), and a user that is a governmental unit within the meaning of §1.103–1 is disregarded.

(iv) Except to the extent provided in §§1.142–4(d), 1.148–11A(i), and 1.150–2(j), this paragraph (a)(5) applies to bonds issued after June 30, 1993, and sold before July 8, 1997. See §1.142–4(d) for rules relating to bonds sold on or after July 8, 1997.

(6) *Deep discount obligations.* (i) Except as otherwise provided in paragraph (a)(7) of this section, the proceeds of any issue of obligations sold by the issuer after June 4, 1982, shall include any imputed proceeds of the issue. The imputed proceeds of an issue equal the sum of the amounts of imputed proceeds for each annual period (hereinafter, bond year) over the term of the issue.

(ii) The amount of imputed proceeds for a bond year equals—

(*a*) The sum of the amounts of interest that will accrue with respect to each obligation that is part of the issue in such year, reduced (but not below zero) by

(*b*) The sum of the amounts of principal and interest that become payable with respect to the issue in that bond year.

(iii) Interest will be deemed to accrue with respect to an obligation on an amount that, as of the commencement of that year, is equal to the sum of—

(*a*) The purchase price (as defined in §1.103–13(d)(2)) allocable to the obligation and

(*b*) The aggregate of the amounts of interest accruing in each prior bond year with respect to the obligation, reduced by all amounts that became payable with respect to the obligation in prior bond years. Any amount that becomes payable during the 30 day period following any bond year will be deemed to have become payable in such bond year. Thus, to the extent interest on an obligation accruing during a bond year does not become payable within 30 days from the end of such year, it is treated as reinvested under the same terms as the obligation. For purposes of this subparagraph (6), the rate at which such interest accrues is equal to the yield of the obligation. Yield is computed in the same manner as set forth in §1.103–13(c)(1)(ii) for computing yield on governmental obligations (assuming annual compounding of interest). Such computations shall be made without regard to optional call dates.

(7) *Deep discount obligations; special rules.* (i) There are no imputed proceeds with respect to an obligation if—

(*a*) The obligation does not have a stated interest rate (determinable at the date of issue) that increases over the term of the obligation, and

(*b*) The purchase price of the obligation is at least 95 percent of its face amount.

At the option of the issuer, any obligation described in the preceding sentence may be disregarded in computing the imputed proceeds of the issue. Payments with respect to such obligations are also disregarded in determining the amount payable with respect to the issue in that bond year. If each obligation which is part of an issue is described in this subdivision (i), there are no imputed proceeds with respect to the issue.

(ii) If the actual rate at which interest is to accrue over the term of an obligation is indeterminable at the date of issue then, in computing the yield of the obligation for purposes of this paragraph, such rate shall be determined as if the conditions as of the date of issue will not change over the term of the obligation. Thus, for example, if interest on an obligation is to be paid semiannually at a rate equal to 80 percent of the yield on six month Treasury bills at the most recent public sale immediately prior to the corresponding interest payment date and the yield on six month Treasury bills sold immediately preceding the issue date is 10 percent, then the six month Treasury bill rate is deemed to be a constant 10 percent for purposes of determining the amount of imputed proceeds of the issue. Therefore, all interest payments on the obligation would be deemed to be made at a rate of 8 percent.

(8) *Examples.* The principles of this paragraph may be illustrated by the following examples:

*Example 1.* State A issues its bonds and plans to use substantially all of the proceeds from such bond issue to purchase land and build a facility which will be used for one of the purposes described in section 103(b)(4) and this section. The arrangement provides that (1) A will issue bonds with a face amount of $21 million and with all accrued interest payable annually, the proceeds of which (after deducting bond election costs, costs of publishing notices, attorneys' fees, printing costs, trustees' fees for fiscal agents, and similar expenses) will be $20 million; (2) $18 million of the proceeds of the bond issue will be used to purchase land and to construct such facility; (3) $2 million of the proceeds will be used for an unrelated facility which will be used by X, a nonexempt person, in a separate trade or business and for a purpose not described in section 103(b) (4) or (5); (4) X will rent both facilities for 20 years at an annual rental equal to the amount necessary to amortize the principal and pay the interest annually on the outstanding bonds; and (5) such payments by X and the facilities will be the security for the bonds. On these facts, substantially all of the proceeds will be used in connection with an exempt facility described in section 103(b)(4) and this section. Accordingly, section 103(b)(1) does not apply to the bonds unless such bonds are thereafter held by a person who is a substantial user of the facilities or a related person within the meaning of section 103(b)(13) and § 1.103–11.

*Example 2.* On July 1, 1982, State B sells an issue of its obligations to an underwriter in anticipation of a public offering. The initial offering price is $18,627,639.69 of which $17,000,000 is to be used to construct a pollution control facility described in section 103(b)(4)(F). X Corporation, a nonexempt person, is to use the facility and, in exchange, is obligated to pay an amount equal to the face amount of the issue when it becomes due. The obligations are issued on August 1, 1982. The face amount of the issue is $30,000,000. The issue is a term issue with all obligations maturing on August 1, 1987. The issue bears no stated rate of interest; there are no interest coupons on the obligations. The bonds are industrial development bonds with a yield (based upon annual compounding) of ten percent. Based on these facts, the amount of imputed proceeds with respect to the issue is determined as follows:

| Date | Purchase price plus accumulated interest | Interest | Imputed proceeds |
|---|---|---|---|
| Aug. 1, 1983 | $18,627,639.69 | $1,862,763.97 | $1,862,763.97 |
| Aug. 1, 1984 | 20,490,403.68 | 2,049,040.37 | 2,049,040.37 |
| Aug. 1, 1985 | 22,539,444.03 | 2,253,944.40 | 2,253,944.40 |
| Aug. 1, 1986 | 24,793,388.43 | 2,479,338.84 | 2,479,338.84 |
| Aug. 1, 1987 | 27,272,727.27 | 2,727,272.73 | 0 |
| Total imputed proceeds | | | 8,645,087.58 |

Therefore, proceeds of the issue equal $27,272,727.27 less issuance costs. Substantially all of the bond proceeds are not used to provide an exempt facility, and section 103(b)(1) applies to the issue.

*Example 3.* The facts are the same as example (2) except that the issue has a face amount and purchase price of $18,500,000. The issue also provides for one payment in addition to the redemption payment, in the amount of $10,267,668 payable on or after August 1, 1986, one year before maturity. Section 103(b)(1) applies to the issue.

*Example 4.* On July 1, 1982, City E sells an issue of industrial development bonds to provide for a convention facility, as described in section 103(b)(4)(C). Assume that the bonds are issued on that date as well. The issue has a face amount of $15,240,000 and a purchase price of $11,929,382.53. The estimated cost of the facility is $11,000,000. The bonds are ''zero coupon'' bonds, *i.e.*, there are no interest coupons. Each series is initially offered for less than 95 percent of its face amount. The issue matures serially over a five year period, with each series being allocated a part of the purchase price of the issue. The following chart indicates the purchase price and yield for each series and debt service for the issue:

[Amount allocable to each series]

| Date | 1983 series at 8 percent | 1984 series at 8.5 percent | 1985 series at 8.75 percent | 1986 series at 9.25 percent | 1987 series at 9.75 percent | Interest accruing on issue* | Amount due | Imputed proceeds |
|---|---|---|---|---|---|---|---|---|
| July 1, 1983 | 2,939,814.82 | 2,697,020.54 | 2,468,629.60 | 2,228.732.51 | 1,595,185.06 | | | 0 |
| | 235,185.18 | 229,246.75 | 216,005.09 | 206,157.76 | 155,530.54 | 1,042,125.32 | 3,175,000 | |
| July 1, 1984 | | 2,926,267.29 | 2,684,634.69 | 2,434,890.27 | 1,750,715.60 | | | 0 |
| | | 248,732.71 | 234,905.54 | 225,227.35 | 170,694.77 | 879,560.37 | 3,175,000 | |
| July 1, 1985 | | | 2,919,540.23 | 2,660,117.62 | 1,921,410.37 | | | 0 |
| | | | 255,459.77 | 246,060.88 | 187,337.51 | 688,858.16 | 3,175,000 | |
| July 1, 1986 | | | | 2,906,178.50 | 2,108,747.88 | | | 0 |
| | | | | 268,821.50 | 205,602.92 | 474,424.42 | 3,175,000 | |
| July 1, 1987 | | | | | 2,314,350.80 | | | 0 |
| | | | | | 225,649.20 | 225,649.20 | 2,540,000 | |
| Total | | | | | | | 15,240,000 | |

*This column (interest accruing on the issue) contains the sums of the interest that accrues on each series in each bond year. The amount of interest accruing on the issue is computed by adding the amount of interest accruing on each series outstanding for that bond year (the bottom number in the line for each bond year). The amount of interest annually accruing on each series also is added to the purchase price of the series to determine the amount of interest accruing in subsequent years, inasmuch as there are no payments with respect to the outstanding series prior to maturity. Thus, the ''principal'' amount, of the top of the two numbers given in such line for each bond year, is the purchase price allocable to that series plus the amount of interest that accrued on that series in prior years.

There are no imputed proceeds because the amount payable on the issue in each bond year exceeds the total amount of interest accruing on the issue during such bond year. Section 103(b)(1) does not apply to the bonds unless such bonds are held by a person who is a substantial user of the facility or a related person within the meaning of section 103(b)(13) and §1.103–11.

*Example 5.* On July 1, 1982, City C issues industrial development bonds in the face amount of $30 million to construct a sports facility described in section 103(b)(4)(B) to be leased to D, a nonexempt person, with payments on the bonds secured by the lease. C receives $30 million in exchange for the bonds which will be used to provide the facility. The bonds mature on July 1, 2002. Each bond provides for an annual interest payment equal to ten percent of the face amount of the bond, with the last payment thereon (on July 1, 2002) including a return of the principal amount of the bond. The proceeds of the issue are $30 million. Section 103(b)(1) does not apply to the bonds unless such bonds are held by a person who is a substantial user of the facility or a related person within the meaning of section 103(b)(13) and §1.103–11.

*Example 6.* The facts are the same as example (5) except that each bond provides for an annual interest payment equal to nine percent of its face amount and is sold with the option to tender the bond to D for purchase at par 5 years after the sale date of July 1, 1982 (*i.e.*, the bonds are sold with a ''put'' option). Such bonds also provide a put option annually thereafter. There are no imputed proceeds (without regard to §1.103–8(a)(7)), and the result is the same as example (5).

*Example 7.* On July 1, 1982, City F sells an issue of industrial development bonds in the face amount of $20 million to acquire a parking facility as described in section 103(b)(4)(D). The estimated cost of the facility is $17,800,000. The issue is issued on the same date and will mature serially over the following ten years. Each bond that is part of the issue bears annual interest coupons, each of which is in an amount equal to ten percent of the face amount of the bond. Each maturity has a face amount of $2,000,000. The issue is initially offered to the public for $19,700,000, allocable to each maturity as follows:

| Maturity | Purchase price |
|---|---|
| July 1, 1983 | $1,990,000 |
| July 1, 1984 | $1,980,000 |
| July 1, 1985 | $1,980,000 |
| July 1, 1986 | $1,970,000 |
| July 1, 1987 | $1,970,000 |
| July 1, 1988 | $1,970,000 |
| July 1, 1989 | $1,960,000 |
| July 1, 1990 | $1,960,000 |
| July 1, 1991 | $1,960,000 |
| July 1, 1992 | $1,960,000 |

Based on the foregoing issue proceeds equal $19,700,000 less issuance costs. There are no imputed proceeds with respect to this issue inasmuch as each bond pays interest at a constant rate in each bond year and the purchase price of each bond is at least 95 percent of its face amount. Substantially all of the proceeds are to be used to provide the exempt facility. Accordingly, section 103(b)(1) does not apply to the bonds unless such bonds are thereafter held by a person who is a substantial user of the facility or a related person within the meaning of section 103(b)(13) and §1.103–11.

(b) *Residential rental property*—(1) *General rule for obligations issued after April 24, 1979.* Section 103(b)(1) shall not apply to any obligation which is issued after April 24, 1979, and is part of an issue substantially all of the proceeds of which are to be used to provide a residential rental project in which 20 percent or more of the units are to be occupied by individuals or families of low or moderate income (as defined in paragraph (b)(8)(v) of this section). In the case of a targeted area project, the minimum percentage of units which are to be occupied by individuals of low or moderate income is 15 percent. See generally §1.103–7 for rules relating to refunding issues.

(2) *Registration requirement.* Any obligation (including any refunding obligation) issued after December 31, 1981, to provide a residential rental project must be issued as part of an issue, each obligation of which is in registered form (as defined in paragraph (b)(8)(ii) of this section).

(3) *Transitional rule.* For purposes of this section, obligations issued after April 24, 1979, may be treated as issued before April 25, 1979, if the transitional requirements of section 1104 of the Mortgage Subsidy Bond Tax Act of 1980 (94 Stat. 2670) are satisfied.

(4) *Residential rental project.* (i) *In general.* A residential rental project is a building or structure, together with any functionally related and subordinate facilities, containing one or more similarly constructed units—

(*a*) Which are used on other than a transient basis, and (*b*) Which satisfy the requirements of paragraph (b)(5)(i) of this section and are available to members of the general public in accordance with the requirement of paragraph (a)(2) of this section.

Substantially all of each project must contain such units and functionally related and subordinate facilities. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, nursing homes, sanitariums, rest homes, and trailer parks and courts for use on a transient basis are not residential rental projects.

(ii) *Multiple buildings.* (*a*) Proximate buildings or structures (hereinafter ''buildings'') which have similarly constructed units are treated as part of the same project if they are owned for Federal tax purposes by the same person and if the buildings are financed pursuant to a common plan.

(*b*) Buildings are proximate if they are located on a single tract of land. The term ''tract'' means any parcel or parcels of land which are contiguous except for the interposition of a road, street, stream or similar property. Otherwise, parcels are contiguous if their boundaries meet at one or more points.

(*c*) A common plan of financing exists if, for example, all such buildings are provided by the same issue or several issues subject to a common indenture.

(iii) *Functionally related and subordinate facilities.* Under paragraph (a)(3) of this section, facilities that are functionally related and subordinate to residential rental projects include facilities for use by the tenants, for example, swimming pools, other recreational facilities, parking areas, and other facilities which are reasonably required for the project, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance personnel.

(iv) *Owner-occupied residences.* For purposes of section 103 (b)(4)(A) and this paragraph (b), the term ''residential rental project'' does not include any building or structure which contains fewer than five units, one unit of which is occupied by an owner of the units.

(5) *Requirement must be continuously satisfied*—(i) *Rental requirement.* Once available for occupancy, each unit (as defined in paragraph (b)(8)(i) of this section) in a residential rental project must be rented or available for rental on a continuous basis during the longer of—

(*a*) The remaining term of the obligation, or

(*b*) The qualified project period (as defined in paragraph (b)(7) of this section).

(ii) *Low or moderate income occupancy requirement.* Individuals or families of low or moderate income must occupy that percentage of completed units in such project applicable to the project under paragraph (b)(1) of this section continuously during the qualified project period. For this purpose, a unit occupied by an individual or family who at the commencement of the occupancy is of low or moderate income is treated as occupied by such an individual or family during their tenancy in such unit, even though they subsequently cease to be of low or moderate income. Moreover, such unit is treated as occupied by an individual or family of low or moderate income until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed 31 days.

(6) *Effect of post-issuance noncompliance*—(i) *In general.* Unless corrected within a reasonable period, noncompliance with the requirements of this paragraph (b) shall cause the project to be treated as other than a project described in section 103 (b)(4)(A) and this paragraph (b) as of the date of issue. After an issue to provide such project ceases to qualify, subsequent conformity with the requirements will not alter the taxable status of such issue.

(ii) *Correction of noncompliance.* If the issuer corrects any noncompliance arising from events occurring after the issuance of the obligation within a reasonable period, such noncompliance (e.g., an unauthorized sublease) shall not cause the project to be a project not described in this paragraph (b). A reasonable period is at least 60 days after such error is first discovered or would have been discovered by the exercise of reasonable diligence.

(iii) *Involuntary loss.* (*a*) The requirements of paragraph (b) shall cease to apply to a project in the event of involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a Federal law or an action of a Federal agency after the date of issue which prevents an issuer from enforcing the requirements of this paragraph, or condemnation or similar event but only if, within a reasonable period, either the obligation used to provide such project is retired or amounts received as a consequence of such event are used to provide a project which meets the requirement of section 103 (b)(4)(A) and this paragraph (b).

(*b*) The provisions of paragraph (b)(6)(iii)(*a*) of this section shall cease to apply to a project subject to foreclosure, transfer of title by deed in lieu of foreclosure or similar event if, at anytime during that part of the qualified project period subsequent to such event, the obligor on the acquired purpose obligation (as defined in §1.103–13(b)(4)(iv)(*a*)) or a related person (as defined in §1.103–10(e)) obtains an ownership interest in such project for tax purposes.

(7) *Qualified project period.* The term ''qualified project period'' means—

(i) For obligations issued after April 24, 1979, and prior to September 4, 1982, a period of 20 years commencing on the later of the date that the project becomes available for occupancy or the date of issue of the obligations. The requirement of paragraph (b)(5)(ii) of this section shall be deemed met if the owner of the project contracts with a Federal or state agency to maintain at least 20 percent (or 15 percent in the case of targeted areas) of the units for low or moderate income individuals or families (as defined in paragraph (b)(8)(v) of this section) for 20 years in consideration for rent subsidies for such individuals or families for such period.

(ii) For obligations issued after September 3, 1982, a period beginning on the later of the first day on which at least 10 percent of the units in the project are first occupied or the date of issue of an obligation described in section 103(b)(4)(A) and this paragraph and ending on the later of the date—

(*a*) Which is 10 years after the date on which at least 50 percent of the units in the project are first occupied,

(*b*) Which is a qualified number of days after the date on which any of the units in the project is first occupied, or

(*c*) On which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

For purposes of this paragraph (b)(7)(ii), the term ''qualified number of days'' means 50 percent of the total number of days comprising the term of the obligation with the longest maturity in the issue used to provide the project. In the case of a refunding of such an issue, the longest maturity is equal to the sum of the period the prior issue was outstanding and the longest term of any refunding obligations.

(8) *Other definitions.* For purposes of this paragraph—

(i) *Unit.* The term ''unit'' means any accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation. Such accommodations may be served by centrally located equipment, such as air conditioning or heating. Thus, for example, an apartment containing a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator, and sink, all of which are separate and distinct from other apartments, would constitute a unit.

(ii) *In registered form.* The term ''in registered form'' has the same meaning as in section 6049. With respect to obligations issued after December 31, 1982, such term shall have the same meaning as prescribed in section 103(j) (including the regulations thereunder).

(iii) *Targeted area project.* The term ''targeted area project'' means a project located in a qualified census tract (as defined in §6a.103A–2(b)(4)) or an area of chronic economic distress (as defined in §6a.103A–2(b)(5)).

(iv) *Building or structure.* The term ''building or structure'' generally means a discrete edifice or other man-made construction consisting of an independent foundation, outer walls, and roof. A single unit which is not an entire building but is merely a part of a building is not a building or structure within the meaning of this section. As such, while single townhouses are not buildings if their foundation, outer walls, and roof are not independent, detached houses and rowhouses are buildings.

(v) *Low or moderate income.* Individuals and families of low or moderate income shall be determined in a manner consistent with determinations of lower income families under section 8 of the United States Housing Act of 1937, as amended, except that the percentage of median gross income which qualifies as low or moderate income shall be 80 percent. Therefore, occupants of a unit are considered individuals or families of low or moderate income only if their adjusted income (computed in the manner prescribed with §1.167(k)–3(b)(3)) does not exceed 80 percent of the median gross income for the area. Notwithstanding the foregoing, the occupants of a unit shall not be considered to be of low or moderate income if all the occupants are students (as defined in section 151(e)(4)), no one of whom is entitled to file a joint return under section 6013. The method of determining low or moderate income in effect on the date of issue will be determinative for such issue, even if such method is subsequently changed. In the event programs under section 8(f) of the Housing Act of 1937, as amended, are terminated prior to the date of issue, the applicable method shall be that in effect immediately prior to the date of such termination.

(9) *Examples.* The following examples illustrate the application of this paragraph (b).

*Example 1.* In August 1982, City X issues $10 million of registered bonds with a term of 20 years to be used to finance the construction of an apartment building to be available to members of the general public. X loans the proceeds of the bonds to Corporation M, the tax owner of the project. The loan is secured by a promissory note from M and a mortgage on the project. The mortgage requires annual payments sufficient to amortize the principal and interest on the bonds. Corporation M maintains 20 percent of the units in the project for low or moderate income individuals and meets all of the requirements of this section until 2002, at which time M converts the project to offices. The bonds are industrial development bonds, but because the proceeds are used for construction of residential rental property, which is an exempt facility under section 103(b)(4)(A) and paragraph (b) of this section, section 103(b)(1) does not apply.

*Example 2.* The facts are the same as in example (1), except that the building is constructed adjacent to a factory, and the factory employees are to be given preference in selecting tenants. The bonds are industrial development bonds and the facility is not an exempt facility under section 103(b)(4)(A) and paragraph (b) of this section because it is not a facility constructed for use by the general public.

*Example 3.* The facts are the same as in example (1), except that the proceeds of the obligation are provided to N, a cooperative housing corporation, to finance the construction of a cooperative housing project. N sells stock in such cooperative to shareholders, some of whom occupy the units in the cooperative and some of whom rent the units to other persons. Such project is not a residential rental project within the meaning of section 103(b)(4)(A) and §1.103–8(b) because less than all of the units in the building are used for rental. Further, the bonds are mortgage subsidy bonds under section 103A because more than a significant portion of the proceeds are used to provide financing for residences, some of which are owner-occupied and some of which are used in the trade or business of rental.

*Example 4.* On February 1, 1984, County Z issues registered obligations with a term of 3 years and loans the proceeds to Corporation V to construct a garden apartment project for tenants who are 65 years or older. The mortgage on the project secures the loan. At the end of 3 years, V obtains permanent financing for the project from a commercial lender. The project is not a targeted area project. V has not contracted with any Federal or State agency to provide rental assistance under section 8 of the United States Housing Act of 1937. As a condition for providing financing for construction, Z requires that the deed to the project contain a covenant that requires the project be used for elderly tenants and restricts occupancy of 20 percent of the units in the project to individuals or families of low or moderate income. Further, the deed provides that ''Such covenant shall run with and bind the land, from the date that ten percent of the units in the project are first occupied until ten years after the date that at least half the units are first occupied. The right to enforce these restrictions is vested in County Z.'' In 1990, however, less than 20 percent of the units are occupied by families or individuals of low or moderate incomes, and three months after learning of this condition County Z had not commenced enforcement of the covenant. Although on the date of issue the proceeds of the obligation were used to provide a residential rental project, the obligation will not be treated as providing a residential rental project within the meaning of section 103(b)(4)(A) as of February 1, 1984, because the project did not meet the requirements of this paragraph for at least 10 years after at least 50 percent of the units are first occupied.

*Example 5.* On January 15, 1983, State X issues registered obligations with a term of 15 years, the proceeds of which are loaned to Corporation P to construct an apartment building. The project will be a ''targeted area project'', within the meaning of §1.103–8(b)(8)(iii). Corporation P intends to rent all the units to individuals for their residences, maintaining 15 percent of the units in the project for individuals having low or moderate incomes, for 15 years. In 1988, however, Corporation P converts 80 percent of the units to condominiums. Corporation P repays the loan to State X which, in turn, redeems the obligations. The obligations are not used to provide a residential rental project within the meaning of section 103(b)(4)(A), and all the interest paid or to be paid on such obligations will be includable in gross income.

*Example 6.* On January 15, 1984, State Z issues registered obligations with a term of 15 years the proceeds of which will be used to acquire and renovate a residential apartment building. Z sells the project to Corporation U and receives a 30-year mortgage. On June 1, 1985, the first occupants of the project commence their tenancies. At least 50 percent of the units in the project are occupied on July 1, 1985. On January 15, 1988, Z issues 35-year refunding bonds the proceeds of which are used to retire the obligations issued in 1984. The prior issue will be discharged by March 15, 1988. In order to meet the requirement of §1.103–8(b)(5)(ii), at least 20 percent of such units must be occupied by individuals of low or moderate income until January 1, 2005.

*Example 7.* The facts are the same as in example (6) except that in 1987, the apartment building is substantially destroyed by fire. The building was insured at its fair market value. U does not intend to reconstruct the building but uses a portion of the insurance proceeds to repay the unpaid balance of the mortgage. Z uses this amount to redeem the outstanding bonds at the first available call date. Since the project was substantially destroyed by fire and the outstanding bonds are retired at the first available call date, the requirements of section 103(b)(4)(A) and this paragraph (b) are satisfied with respect to the obligations.

*Example 8.* The facts are the same as in example (6) except that in 1987 U defaults on the mortgage, and Z obtains title to the project without instituting foreclosure proceedings. Z sells the project to S and uses the proceeds to retire the outstanding bonds. Since S did not obtain the project with obligations described in section 103(b)(4), S is not required to meet the requirements of section 103(b)(4)(A) and this paragraph. Further, the 1984 obligations are obligations described in section 103(b)(4)(A).

*Example 9.* In September 1983, State W issues $10 million of registered bonds with a term of 3 years, the proceeds of which are to be loaned to Corporation V to finance the construction of an apartment building in a rural community. At the end of 3 years, V obtains permanent financing from Federal Agency T. Agency T will not allow the deed to contain any restrictive covenant relating to the use of the project. Under Federal law, however, T requires that V maintain all of the units in the project for rental to low-income farmworkers for the term of the mortgage, which is 20 years. Further, the mortgage between T and V provides that if T determines that low-income housing is no longer required in the community in which the project is constructed then the repayment of the mortgage may be accelerated. T determines as of the date of issue that low-income housing will be needed in the community for at least 20 years. In 1987, the project fails to meet the requirements of section 1.103–8(b)(5)(ii), relating to occupancy by individuals or families of low or moderate income. Further, T does not require V to correct the failure. Based on the foregoing, the bonds issued by W will be treated as described in section 103(b)(4)(A).

*Example 10.* The facts are the same as in example (9) except that in 1987, the Federal law is amended to provide that Agency T may not enforce its low-income occupancy requirement. The result is the same.

*Example 11.* The facts are the same as in example (9) except that in 1987 Agency T determines that due to a change in circumstances in the community in which the project is located low-income rental housing is no longer required. As such, T requires V to repay the mortgage. Since the obligations have been repaid, W has no legal right to enforce the requirements of paragraph (b) with respect to the project. Subsequent nonconformity of the project with the requirements of §1.103–8(b) under these circumstances will not cause the obligations issued by W to be industrial development bonds within the meaning of section 103(b)(1).

(10) *Obligations issued before April 25, 1979*—(i) *General rules.* Section 103(b)(1) shall not apply to obligations issued before April 25, 1979, which are part of an issue substantially all of the proceeds of which are to be used to provide residential real property for family units. In order to qualify under this

paragraph (b) as an exempt facility, the facility must satisfy the public use requirement of paragraph (a)(2) of this section by being available for use by members of the general public.

(ii) *Family units defined.* For purposes of this paragraph (b) the term ''family unit'' means a building or any portion thereof which contains complete living facilities which are to be used on other than a transient basis by one or more persons, and facilities functionally related and subordinate thereto. Thus, an apartment which is to be used on other than a transient basis as a residence by a single person or by a family and which contains complete facilities for living, sleeping, eating, cooking, and sanitation, constitutes a family unit. Such a unit may be served by centrally located machinery and equipment as in a typical apartment building. To qualify as a family unit, the living facilities must be a separate, self-contained building or constitute one unit in a building substantially all of which consists of similar units, together with functionally related and subordinate facilities and areas. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, sanitariums, rest homes, and trailer parks and courts for use on a transient basis do not constitute residential real property for family units.

(iii) *Functionally related and subordinate facilities.* Under paragraph (a)(3) of this section, facilities which are functionally related and subordinate to residential real property actually used for family units include, for example, facilities for use by the occupants such as a swimming pool, a parking area, and recreational facilities.

(c) *Sports facilities*—(1) *General rule.* Section 103(b)(4)(B) provides that section 103(b)(1) shall not apply to obligations issued by a State or local governmental unit which are part of an issue substantially all of the proceeds of which are to be used to provide sports facilities. In order to qualify as an exempt facility under section 103(b)(4)(B) and this paragraph, the facility must satisfy the public use requirement of paragraph (a)(2) of this section by being available for use by members of the general public either as participants or as spectators.

(2) *Sports facility defined.* (i) For purposes of section 103(b)(4)(B) and this paragraph, the term ''sports facilities'' includes both outdoor and indoor facilities. The facility may be designed either as a spectator or as a participation facility. For example, the term includes both indoor and outdoor stadiums for baseball, football, ice hockey, or other sports events, as well as facilities for the participation of the general public in sports activities, such as golf courses, ski slopes, swimming pools, tennis courts, and gymnasiums. The term does not include, however, facilities such as a golf course, swimming pool, or tennis court, which are constructed for use by members of a private club or as integral or subordinate parts of a hotel or motel, or the use of which will be restricted to a special class or group or to guests of a particular hotel or motel, since they are not facilities for the use of the general public as required by paragraph (a)(2) of this section.

(ii) Under paragraph (a)(3) of this section, facilities which are functionally related and subordinate to a sports facility, such as a parking lot, clubhouse, ski slope warming house, bath house, or ski tow, are considered to be part of a sports facility. A ski lodge which consists primarily of overnight accommodations is not functionally related and subordinate to a sports facility.

(d) *Convention or trade show facilities*—(1) *General rule.* Section 103(b)(4)(C) provides that section 103(b)(1) shall not apply to obligations issued by a State or local governmental unit which are a part of an issue substantially all of the proceeds of which are to be used to provide convention or trade show facilities. In order to qualify under section 103(b)(4)(C) and this paragraph as an exempt facility, the facility must satisfy the public use requirement of paragraph (a)(2) of this section by being available for an appropriate charge or rental, on a rate scale basis, for use by members of the general public. The public use requirement is not satisfied if the use of a convention or trade show facility is limited by long-term leases to a single user or group of users.

(2) *Convention or trade show facilities defined.* For purposes of section 103(b)(4)(C) and this paragraph, the

term ''convention or trade show facilities'' means special-purpose buildings or structures, such as meeting halls and display areas, which are generally used to house a convention or trade show, including, under paragraph (a)(3) of this section, facilities functionally related and subordinate to such facilities such as parking lots or railroad sidings. A hotel or motel which is available to the general public, whether or not it is intended primarily to house persons attending or participating in a convention or trade show, is neither a convention or trade show facility nor functionally related and subordinate thereto.

(e) *Certain transportation facilities*—(1) *General rule.* Section 103(b)(4)(D) provides that section 103(b)(1) shall not apply to obligations issued by a State or local governmental unit which are part of an issue substantially all of the proceeds of which are to be used to provide (i) airports, docks, wharves, mass commuting facilities, or public parking facilities, or (ii) storage or training facilities directly related to any such facility. In order to qualify under section 103(b)(4)(D) and this paragraph as an exempt facility, the facility must satisfy the public use requirement of paragraph (a)(2) of this section by being available for use by members of the general public or for use by common carriers or charter carriers which serve members of the general public. A dock or wharf which is part of a public port (or a public port to be constructed in accordance with a plan which has been finally adopted on the date the obligations in question are issued) satisfies the public use test. A parking lot will be available for use by the general public unless more than an insubstantial portion thereof will be used exclusively by or for the benefit of a nonexempt person by reason of a formal or informal agreement or by reason of the remote geographic location of the facility.

(2) *Definitions.* For purposes of section 103(b)(4)(D) and this paragraph—

(i) With respect to bonds sold at or before 5:00 p.m. EST on December 29, 1978, an airport includes service accommodations for the public such as terminals, retail stores in such terminals, runways, hangars, loading facilities, repair shops, parking areas, and facilities which, under paragraph (a)(3) of this section, are functionally related and subordinate to the airport, such as facilities for the preparation of in-flight meals, restaurants, and accommodations for temporary or overnight use by passengers, and other facilities functionally related to the needs or convenience of passengers, shipping companies, and airlines. The term ''airport'' does not include a landing strip which, by reason of a formal or informal agreement, or by reason of geographic location, will not be available for general public use.

(ii) With respect to bonds sold after 5:00 p.m. EST on December 29, 1978—

(*a*) An airport includes facilities which are directly related and essential to—

(*1*) Servicing aircraft or enabling aircraft to take off and land, or

(*2*) Transferring passengers or cargo to or from aircraft.

A facility does not satisfy either of the foregoing requirements if the facility need not be located at, or in close proximity to, the take-off and landing area in order to perform its function. Examples of facilities which satisfy those requirements are terminals, runways, hangars, loading facilities, repair shops, and land-based navigation aids such as radar installation.

(*b*) Under paragraph (a)(3) of this section, an airport includes facilities other than those described in paragraph (e)(2)(ii)(*a*) only if they are functionally related and subordinate to an airport (as defined in paragraph (e)(2)(ii)(*a*)). A facility (or part thereof) is not functionally related and subordinate to an airport if the facility (or part thereof)—

(*1*) Is not of a character and size commensurate with the character and size of the airport at or adjacent to which the facility is located, or

(*2*) Is not located at or adjacent to that airport.

A facility may satisfy the character and size requirement although it provides minimal benefits to other airports. For example, a facility for the preparation of in-flight meals which has capacity sufficient to prepare all in-flight meals for aircraft departing the airport where the facility is located qualifies although some meals may be consumed in transit between other airports. Other examples of facilities functionally related and subordinate to an airport are restaurants and retail stores located in terminals, ground transportation parking areas, and accommodations for temporary or overnight use by passengers. Unimproved land (including agricultural land) that is adjacent to an airport and that is impaired by a significant level of airport noise is functionally related and subordinate to the airport if after its acquisition that land will not be converted to a use that is incompatible with the level of airport noise. Adjacent land with existing improvements also may be functionally related and subordinate to an airport by reason of impairment by a significant level of airport noise but only if the use of such land before its acquisition is incompatible with the airport noise level, its use after acquisition is to be compatible, and the post-acquisition use will be essentially different from the pre-acquisition use. Notwithstanding the foregoing, an interest in such improved land acquired solely to mitigate damages attributable to airport noise is treated as functionally related and subordinate to the airport. Thus, for example, amounts allocated to imposing a servitude on improved land adjacent to an airport restricting its future use to uses compatible with airport noise are treated as amounts allocated to property functionally related and subordinate to an airport. For the purpose of determining whether land is impaired by a significant level of airport noise, any generally accepted noise estimating methodology may be used. For example, a Noise Exposure Forecast (NEF), a method for composite noise rating recommended by the Federal Aviation Administration to measure the impact of airport noise, may be used for this purpose. Compatibility may be determined by reference to regulations or general guidelines published by the Federal Aviation Administration under section 102 of the Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. 2102), or sections 11(3)(C) and 18(a)(4) of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1711(3)(C) and 1718(a)(4)), concerning uses of land impaired by a significant level of airport noise, or, where available, by reference to the airport compatibility plan specifically addressing what constitutes a compatible use of that land.

(*c*) As an illustration of the rules of this paragraph (e)(2)(ii), an office building (or office space within a building) or a computer facility, either of which serves a system-wide or regional function of an airline, is not considered part of an airport since that facility is not described in either paragraph (e)(2)(ii)(*a*) or (*b*). However, a maintenance or overhaul facility which services aircraft is considered part of an airport under paragraph (e)(2)(ii)(*a*) since that facility is directly related and essential to servicing aircraft and must be located where aircraft take off and land in order to perform its function.

(*d*) A hotel located at or adjacent to an airport satisfies the requirements of paragraph (e)(2)(ii)(*b*), that is, it is of a character and size commensurate with the character and size of the airport at or adjacent to which it is located, if the number of guest rooms in the hotel is reasonable for the size of the airport, taking into account the current and projected passenger usage of the terminal facility. If the hotel contains meeting rooms, the number and size of these rooms must be in reasonable proportion to the number of guest rooms in the hotel. Limited recreational facilities will not prevent the hotel from being of a character and size commensurate with the character and size of the airport.

(iii) A dock or wharf includes property which, under paragraph (a)(3) of this section, is functionally related and subordinate to a dock or wharf such as the structure alongside which a vessel docks, the equipment needed to receive and to discharge cargo and passengers from the vessel, such as cranes and conveyors, related storage, handling, office, and passenger areas, and similar facilities.

(iv) A mass commuting facility includes real property together with improvements and personal property used therein, such as machinery, equipment, and furniture, serving the general public commuting on a day-to-day basis by bus, subway, rail, ferry, or other conveyance which moves over prescribed routes. Such property also includes terminals and facilities which, under paragraph (a)(3) of this section, are functionally related and subordinate to the mass commuting facility, such as parking garages, car barns, and repair shops. Use of mass commuting facilities by noncommuters in common with commuters is immaterial. Thus, a terminal leased to a common carrier bus line which serves both commuters and long distance travelers would qualify as an exempt facility.

(3) *Related storage or training facility.* Section 103 (b)(4)(D) includes only those storage and training facilities which are both (i) directly related to a facility to which subparagraph (1)(i) or (ii) of this paragraph applies and (ii) physically located on or adjacent to such a facility. For example, a storage facility would include a grain elevator, silo, warehouse, or oil and gas storage tank used in connection with a dock or wharf and located on or adjacent to such dock or wharf. Similarly, a training facility would include a building located at or adjacent to an airport for the training of flight personnel or a paved area immediately adjoining a bus garage used to train bus drivers.

(4) *Examples.* The principles of this paragraph may be illustrated by the following examples:

*Example 1.* B Airport Authority, a political subdivision of State A, owns and operates B Airport. B Airport Authority adds several runways. In view of the expanded area impaired by significant levels of airport noise, the Authority proposes to issue bonds the proceeds of which are to be used to acquire a hospital located adjacent to the airport. The noise level on the acquired property is 40 NEF. By reference to a noise exposure map setting forth noncompatible land uses and by reference to guidelines published by the Federal Aviation Administration, it is established that continued use of the land for a hospital is not compatible with the noise level. Prior to issuing the bonds, B contracts to lease the property to Corporation C to be used for warehouse space. Within 18 months of the bonds' issuance C will remodel the hospital (previously owned by D, who is unrelated to C) with its own funds and rent the facility as a warehouse. Use as a warehouse is determined to be compatible with the level of airport noise impairing the land. The improved land and prospective revenues from the facility's rental are security for the proposed issuance. Based on the foregoing, the acquired land satisfies the public use test. Furthermore, it is functionally related and subordinate to the airport because the improvements are to be used in an essentially different manner than prior to the land's acquisition. The bonds are industrial development bonds. However, section 103(b)(1) does not apply unless the provisions of section 103(b)(13) and §1.103–11 apply.

*Example 2.* The facts are the same as in Example (1) except that a substantial portion of the proceeds of the bond issue is allocated to the acquisition of a limited interest in an additional tract of land (also impaired by airport noise measured at 40 NEF) on which an office building stands. The limited interest holds B harmless for damages caused by airport noise and restricts uses of the tract after the building is retired to those compatible with noise levels caused by the airport. Based on the foregoing, such interest satisfies the public use test. Furthermore, the interest is functionally related and subordinate to the airport because it is solely to mitigate damage attributable to airport noise, in part by restricting future land uses. The bonds are industrial development bonds. However, section 103(b)(1) does not apply unless the provisions of section 103(b)(13) or §1.103–11 apply.

*Example 3.* On June 1, 1982, M Airport Authority, a political subdivision of State O, issues obligations, the proceeds of which are loaned to X Corporation, a nonexempt person. X uses the proceeds to construct a hotel adjacent to the main terminal building at M Airport. X will be unconditionally liable for repayment of the proposed obligations. The hotel will be used to provide temporary and overnight accommodations for airline passengers using M Airport. The number of rooms in the hotel is reasonable for an airport of M's size, taking into account the current and projected passenger usage of the terminal facility. In addition to guest rooms, the hotel will contain a restaurant, small retail stores (such as a gift shop and newstand), and limited recreation facilities (such as a swimming pool). The hotel will also contain several multipurpose rooms suitable for use as meeting rooms. The number and size of these rooms will be in reasonable proportion to the number and size of the guest rooms in the hotel. Use of the guest rooms, restaurant and stores, recreational facilities, and meeting rooms by air passengers arriving at or departing from M Airport will be incidental to the use of the hotel by air passengers for temporary and overnight accommodations. The hotel is of a character and size commensurate with the character and size of M Airport. Consequently, applying the provisions of §1.103–8(e)(2), the hotel is functionally related and subordinate to M Airport. The obligations are industrial development bonds. Section

103(b)(1) does not apply to the obligations, however, unless the provisions of section 103(b)(10) and §1.103–11 apply.

*Example 4.* On June 1, 1982, N Airport Authority, a political subdivision of State P, issues obligations the proceeds of which are loaned to Y Corporation, a nonexempt person. Y uses the proceeds to construct a hotel adjacent to the main terminal building at N Airport. Y Corporation will be unconditionally liable for repayment of the proposed obligations. The hotel will contain extensive recreational facilities, including a large rooftop swimming pool, tennis courts, and a health club. In addition, facilities for conferences consisting of a ballroom-sized meeting room capable of being partitioned by movable panels and several smaller meeting rooms will be constructed. The number of rooms in the hotel will substantially exceed the number which is reasonably based on the current and projected passenger usage of the terminal facility. Because of the presence of extensive recreational and conference facilities, as well as the presence of on excessive number of rooms at the hotel, the hotel fails to be of a character and size commensurate with the character and size of N Airport. The result would be the same if the hotel did not have extensive recreational facilities. Consequently, the hotel is not functionally related and subordinate to N Airport under §1.103–8(e)(2). The obligations are industrial development bonds and interest thereon is not excluded from gross income by reason of subsection (a)(1) or (b)(4) of section 103.

(f) *Certain public utility facilities*—(1) *General rule.* (i) Section 103(b)(4)(E) provides that section 103(b)(1) shall not apply to obligations issued by a State or local governmental unit which are part of an issue substantially all of the proceeds of which are to be used to provide sewage disposal facilities, solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas. In order to qualify under section 103(b)(4)(E) as an exempt facility, the facility must satisfy the public use requirement of paragraph (a)(2) of this section. A public utility facility described in this subparagraph (with the exception of sewage and solid waste disposal facilities which will be treated in all events as serving the general public) will satisfy the public use requirement only if such facility, or the output thereof, is available for use by members of the general public.

(ii) A facility for the local furnishing of electric energy or gas is, for purposes of applying the public use test in paragraph (a)(2) of this section, available for use by members of the general public if (*a*) the owner or operator of the facility is obligated, by a legislative enactment, local ordinance, regulation, or the equivalent thereof, to furnish electric energy or gas to all persons who desire such services and who are within the service area of the owner or operator of such facility, and (*b*) it is reasonably expected that such facility will serve or be available to a large segment of the general public in such service area. For rules with respect to facilities for the furnishing of water, see paragraph (h) of this section.

(2) *Definitions.* For purposes of section 103(b)(4)(E) and this paragraph—

(i) The term ''sewage disposal facilities'' means any property used for the collection, storage, treatment, utilization, processing, or final disposal of sewage.

(ii) The term ''facilities for the local furnishing of electric energy or gas'' means property which—

(*a*) Is either property of a character subject to the allowance for depreciation provided in section 167 or land,

(*b*) Is used to produce, collect, generate, transmit, store, distribute, or convey electric energy or gas.

(*c*) Is used in the trade or business of furnishing electric energy or gas, and

(*d*) Is a part of a system providing service to the general populace of one or more communities or municipalities, but in no event more than 2 contiguous counties (or a political equivalent) whether or not such counties are located in one State.

For purposes of this subdivision, a city which is not within, or does not consist of, one or more counties (or a political equivalent) shall be treated as a county (or a political equivalent). A facility for the generation of electric energy otherwise qualifying under this subdivision will not be disqualified because it is connected to a system for interconnection with other public utility systems for the emergency transfer of electric energy. The facilities need not be located in the area served by them. Also, the term ''facilities for the local furnishing of electric energy or gas'' does not include coal, oil, gas, nuclear cores, or other materials performing a similar function.

(g) *Air or water pollution control facilities*—(1) *General rule.* Section 103(b)(4)(F) provides that section 103(b)(1) shall not apply to obligations issued by a State or local governmental unit which are part of an issue substantially all of the proceeds of which are to be used to provide air or water pollution control facilities. Such facilities are in all events treated as serving the general public and, thus, satisfy the public use requirement of paragraph (a)(2) of this section.

(2) *Definitions.* (i) For purposes of section 103(b)(4)(F) and this paragraph, property is a pollution control facility to the extent that the test of either subdivision (iii) or (iv) of this subparagraph is satisfied, but only if—

(*a*) It is property which is described in subdivision (ii) of this subparagraph and is either of a character subject to the allowance for depreciation provided in section 167 or land, and

(*b*) Either (*1*) a Federal, State, or local agency exercising jurisdiction has certified that the facility, as designed, is in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants, or water pollution, as the case may be, or (*2*) the facility is designed to meet or exceed applicable Federal, State, and local requirements for the control of atmospheric pollutants or contaminants, or water pollution, as the case may be, in effect at the time the obligations, the proceeds of which are to be used to provide such facilities, are issued.

(ii) Property is described in this subdivision if it is property to be used, in whole or in part, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. In the case of property to be used to control water pollution, such property includes the necessary intercepting sewers, pumping, power, and other equipment, and their appurtenances. For rules relating to facilities which remove pollutants from fuel or certain other items, see subdivision (vi) of this subparagraph.

(iii) In the case of an expenditure for property which is designed for no significant purpose other than the control of pollution, the total expenditure for such property satisfies the test of this subdivision. Thus, where property which is to serve no function other than the control of pollution is to be added to an existing manufacturing or production facility, the total expenditure for such property satisfies the test of this subdivision. Also, if an expenditure for property would not be made but for the purpose of controlling pollution, and if the expenditure has no significant purpose other than the purpose of pollution control, the total expenditure for such property satisfies the test of this subdivision even though such property serves one or more functions in addition to its function as a pollution control facility.

(iv) In the case of property to be placed in service for the purpose of controlling pollution and for a significant purpose other than controlling pollution, only the incremental cost of such facility satisfies the test of this subdivision. The ''incremental cost'' of property is the excess of its total cost over that portion of its cost expended for a purpose other than the control of pollution.

(v) An expenditure has a significant purpose other than the control of pollution if it results in an increase in production or capacity, or in a material extension of the useful life of a manufacturing or production facility or a part thereof.

(h) *Water facilities*—(1) *General rule.* Section 103(b)(4)(G) provides that section 103(b)(1) shall not apply to obligations issued by a State or local governmental unit which are part of an issue substantially all of the proceeds of which are to be used to provide facilities for the furnishing of water which are available, on reasonable demand, to members of the general public. A water facility will satisfy the public use test of paragraph (a)(2) of this section if it will provide water, on reasonable demand, to any member of the general public within the service area of the water system of which such facility is a part.

(2) *Definition.* For purposes of section 103(b)(4)(G) and this paragraph, the ''water facilities'' include artesian wells, reservoirs, dams, related equipment and pipelines, and other facilities used to furnish water for domestic, industrial, irrigation, or other purposes.

(3) *Effective date.* The provisions of this paragraph apply in the case of facilities provided by obligations issued after January 1, 1969. In the case of facilities provided by obligations issued on or before such date to which section 103(b) is applicable, the provisions of paragraph (f) of this section shall apply. For such purposes, wherever the term ''local furnishing of electric energy or gas'' appears in paragraph (f) of this section, such term shall be deemed to read ''local furnishing of electric energy, gas, or water.''

(i) *Examples.* The application of section 103(b)(4) and this section are illustrated by the following examples:

*Example 1.* City B plans to issue $10 million of bonds to be used to construct a sports stadium. The revenues from the facility and the facility itself will be the security for the bonds. A professional football team rents the facility on a long-term leasee for part of the year and a professional baseball team rents the sports facility for the remainder of the year. Tickets are sold by the teams to the general public. The bonds are industrial development bonds, but since the proceeds are used for a spectator facility for general public use, which is an exempt facility under section 103(b)(4)(B) and paragraph (c) of this section, section 103(b)(1) does not apply unless the provisions of section 103(b)(13) and §1.103–11 apply.

*Example 2.* City C plans to issue $10 million of bonds to be used to construct a convention hall which it will own. City C plans to lease the convention hall for 25 years to corporation Y, a nonexempt person, which will operate and maintain it. The terms of the lease obligate Y to make the convention hall generally available for civic, business, and recreational shows, meetings, performances, and similar activities serving or benefiting the community. Lease payments from Y and the facility will be security for the bonds. The bonds are industrial development bonds, but since the proceeds are to be used for a facility for general public use, which is an exempt facility under section 103(b)(4)(C) and paragraph (d) of this section, section 103(b)(1) does not apply unless the provisions of section 103(b)(13) and §1.103–11 apply.

*Example 3.* City D issues $100 million of its bonds and uses the proceeds to finance construction of an airport for the use of the general public. D will own and operate the airport. A major portion of the rentable space in the terminal building is leased on a long-term basis to common carrier and non-scheduled airlines. The bonds will be secured by the airport landing and runway charges and by payments with respect to such long-term leases from such commercial airlines. Such commercial airline payments are expected to constitute more than 50 percent of the total revenues from the airport. The bonds are industrial development bonds, but since the proceeds are to be used for an airport for use by the general public and by carriers serving the general public, which is an exempt facility under section 103(b)(4)(D) and paragraph (e) of this section, section 103(b)(1) does not apply unless the provisions of section 103(b)(13) and §1.103–11 apply. The result would be the same if D hired an airport management firm to operate the airport.

*Example 4.* City E issues $6 million of its bonds and uses the proceeds to finance construction of a landing strip for airplanes to be located adjacent to the factories of corporations Y and Z. The landing strip will be used in the trades or businesses of Y and Z and by any member of the general public wishing to use it. However, due to its location, general public use will be negligible. The lease payments by Y and Z for the use of the facility are the security for the bonds. The bonds are industrial development bonds and the facility is not an exempt facility under section 103(b)(4)(D) and paragraph (c) of this section because it is not a facility constructed for general public use.

*Example 5.* State F and corporation Z enter into an arrangement which provides that F will issue $10 million of its bonds and use the proceeds to construct a facility for Z the only purpose of which is to control air and water pollution at Z's plant. The principal and interest on the bonds will be secured by the charges which F will impose on Z. The bonds are industrial development bonds, but since the proceeds are to be used for air and water pollution facilities designed to abate pollution by private persons, such facilities are for the benefit of the general public and are exempt facilities under section 103(b)(4)(F) and paragraph (g) of this section. Accordingly, section 103(b)(1) does not apply unless the provisions of section 103(b)(13) and §1.103–11 apply.

*Example 6.* City G issues $20 million of its bonds and will use $6 million to finance residential rental property which qualifies as an exempt facility under section 103(b)(4)(A) and paragraph (b) of this section, $9 million to finance construction of a stadium which qualifies as an exempt facility under section 103(b)(4)(B) and paragraph (c) of this section, and $5 million for convention facilities which qualify as exempt facilities under section 103(b)(4)(C) and paragraph (d) of this section. The facilities will be used in the trades or businesses of nonexempt persons and rental payments with respect to such facilities and the facilities themselves will be the security for the bonds. The bonds are industrial development bonds, but since all the proceeds are to be used for facilities which are exempt facilities under section 103(b)(4), section 103(b)(1) does not apply unless the provisions of section 103(b)(10) and §1.103–11 apply. The result would be the same, if; instead of using $9 million to finance construction of a stadium, the $9 million were used to finance construction of a capitol building. [Reg. §1.103–8].

[T.D. 7199, 37 FR 15490, Aug. 3, 1972]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.103–8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

### § 1.103–9 Interest on bonds to finance industrial parks.

(a) *General rule.* (1) Under section 103(c)(5), interest paid on an issue of obligations issued by a State or local governmental unit (as defined in §1.103–1) is not includable in gross income if substantially all of the proceeds of such issue is to be used to finance the acquisition or development of land as the site for an industrial park (referred to in this section as ''industrial park bonds''). However, interest on an obligation of such an issue is includable in gross income if the obligation is held by a substantial user or a related person (as described in section 103(c)(7) and §1.103–11). If substantially all of the proceeds of a bond issue is to be so used to finance an industrial park, the debt obligations are treated as obligations described in section 103(a)(1) and §1.103–1 even though such obligations are industrial development bonds within the meaning of section 103(c)(2) and §1.103–7. Whether substantially all of the proceeds of an issue of governmental obligations are used to finance an industrial park is determined consistently with the rules for exempt facilities in §1.103–8(a)(1)(i).

(2) The provisions of subparagraph (1) of this paragraph shall also apply to an issue of obligations substantially all of the proceeds of which is to be used to acquire or develop land as the site for an industrial park described in section 103(c)(5) and this section and for either or both of the following purposes: (i) To finance exempt facilities described in section 103(c)(4) and §1.103–8, (ii) to finance facilities to be used by an exempt person.

(3) Section 103(c)(5) only becomes applicable where the bond issue meets both the trade or business and the security interest tests so that the obligations are industrial development bonds within the meaning of section 103(c)(2). For the interrelationship of the rules provided in this section and the exemption for certain small issues provided in section 103(c)(6), see §1.103–10.

(b) *Definition of an industrial park.* For purposes of section 103(c)(5) and this section, the term ''industrial park'' means a tract of land, other than a tract of land intended for use by a single enterprise, suitable primarily for use as building sites by a group of enterprises engaged in industrial, distribution, or wholesale businesses if either—

(1) The control and administration of the tract is vested in an exempt person (within the meaning of paragraph (b)(2) of §1.103–7), or

(2) The uses of the tract are normally (i) regulated by protective minimum restrictions, ordinarily including the size of individual sites, parking and loading regulations, and building setback lines, and (ii) designed to be compatible, under a comprehensive plan, with the community in which the industrial park is located and with the uses of the surrounding land.

(c) *Development of land defined.* For purposes of section 103(c)(5) and this section, the term ''development of land'' includes the provision of certain improvements to an industrial park site if such improvements are incidental to the use of the land as an industrial park. Such incidental improvements include the building or installation of incidental water, sewer, sewage and waste disposal, drainage, or similar facilities (whether surface, subsurface, or both). Such incidental improvements include the provision of incidental transportation facilities, such as hard-surface roads (including curbs and gutters) and railroad spurs and sidings; power distribution facilities, such as gas and electric lines; and communication facilities. The provision of structures or buildings of any kind is not included within the meaning of the term ''development of land,'' except for those structures or buildings which are necessary in connection with the incidental improvements encompassed by the term, such as, for example, a water pumphouse and storage tank needed in connection with the incidental provision of water facilities in an industrial park.

(d) *Examples.* The application of the rules contained in section 103(c)(5) and this section are illustrated by the following examples:

*Example 1.* City A and corporations X, Y, and Z (unrelated companies) enter into an arrangement under which A is to acquire a tract of land suitable for use as an industrial park. The arrangement provides that: (1) A will issue $10 million of bonds to be used for the acquisition and development of a suitable tract of land; (2) the tract will be controlled and administered by A, pursuant to a comprehensive zoning plan, for the use of a group of enterprises; (3) A will install necessary water, sewer, and drainage facilities on the tract; (4) A will sell substantial portions of the developed tract to X for use as a factory site and to Y for use as a warehouse site; (5) A will lease a sizeable portion of the tract to Z for 20 years as a distribution center site; and (6) the developed tract and the proceeds from the sale or lease of parts of the tract will be the security for the bonds. The bonds are industrial development bonds. Since, however, the proceeds of the issue are to be used for the acquisition and development of a tract of land as the site for an industrial park under section 103(c)(5), section 103(c)(1) does not apply unless the provisions of section 103(c)(7) and §1.103–11 apply.

*Example 2.* The facts are the same as in example (1) except that $1 million of the proceeds of the $10 million issue are to be used for the construction of a factory by corporation W or X. The bonds are industrial development bonds. Under these circumstances, substantially all of the proceeds are treated as used or to be used for the acquisition and development of a tract of land as the site for an industrial park described in section 103(c)(5). Accordingly, section 103(c)(1) does not apply unless the provisions of section 103(c)(7) and §1.103–11 apply.

[T.D. 7199, 37 FR 15494, Aug. 3, 1972, as amended by T.D. 7511, 42 FR 54285, Oct. 5, 1977]

### §1.103–10 Exemption for certain small issues of industrial development bonds.

(a) *In general.* Section 103(b)(6) applies to certain industrial development bond issues (referred to in this section as ''exempt small issues'') and bonds issued to refund certain issues (referred to in this section as ''exempt small refunding issues''). If an issue is an exempt small issue or an exempt small refunding issue, then under the requirements of section 103(b)(6) and this section the interest paid on the debt obligations is not includable in gross income, and the obligations are treated as obligations described in section 103(a)(1) and §1.103–1, even though such obligations are industrial development bonds as defined in section 103(b)(2) and §1.103–7. However, interest on an obligation of such an issue is includable in gross income if the obligation is held by a substantial user of the financed facilities or a related person (as described in section 103(b)(7) and §1.103–11). Section 103(b)(6) only becomes applicable where the bond issue meets both the trade or business and the security interest tests so that the obligations are industrial development bonds within the meaning of section 103(b)(2). For bonds issued before January 1, 1979, in taxable years ending before such date, and for capital expenditures made before January 1, 1979, with respect to such bonds, paragraphs (b), (c), and (d) of this section shall be applied by substituting $5 million for $10 million.

(b) *Small issue exemption*—(1) *$1 million or less.* Section 103(b)(6)(A) provides that section 103(b)(1) shall not apply to any debt obligation issued by a State or local governmental unit as part of an issue where—

(i) The aggregate authorized face amount of such issue (determined by aggregating the outstanding face amount of any prior exempt small issues described in paragraph (d) of this section and the face amount of the issue of obligations in question) is $1 million or less; and

(ii) Substantially all of the proceeds of such issue is to be used for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation under section 167. Proceeds which are loaned to a borrower for use as working capital or to finance inventory are not used in the manner described in the preceding sentence. Whether substantially all of the proceeds of an issue of governmental obligations are used in such manner is determined consistently with the rules for exempt facilities in §1.103–8(a)(1)(i). Any obligation which is an industrial development bond within the meaning of section 103(b)(2) and which satisfies the $1 million small issue exemption requirements is an exempt small issue. See paragraph (c)(1) of this section for the treatment of refunding issues of $1 million or less.

(2) *$10 million or less.* (i) Under section 103(b)(6)(D), the issuing State or local governmental unit may elect to have an aggregate authorized face amount of $10 million or less, in lieu of the $1 million exemption otherwise provided for in section 103(b)(6)(A), with respect to issues of obligations that are industrial development bonds (within the meaning of section 103(b)(2)) issued after October 24, 1968. If the election is made in a timely manner, the bonds will be treated as obligations of a State or local governmental unit described in section 103(a)(1) and § 1.103–1 if the sum of—

(*a*) The aggregate face amount of the issue including the aggregate outstanding face amount of any prior $1 million or $10 million exempt small issues taken into account under section 103(b)(6)(B) and paragraph (d) of this section, and

(*b*) The aggregate amount of ''section 103(b)(6)(D) capital expenditures'' (within the meaning of paragraph (b)(2)(ii) of this section),

is $10 million or less. In the case of an issue of obligations that qualified for exemption under section 103(b)(6)(A) and this paragraph, if a section 103(b)(6)(D) capital expenditure made after the date of issue has the effect of making taxable the interest on the issue, under section 103(b)(6)(G) the loss of tax exemption for the interest shall begin only with the date on which the expenditure that caused the issue to cease to qualify under the $10 million limit was paid or incurred. See paragraph (b)(2)(vi) of this section for the time and manner in which the issuer may elect the $10 million exemption. See section 103(b)(6)(H) and paragraph (c)(2) of this section for the treatment of certain refinancing issues of $10 million of less.

(ii) The term ''section 103(b)(6)(D) capital expenditure'' is defined in this subdivision. Special rules for applying such definition in the case of certain expenditures paid or incurred by a State or local governmental unit are prescribed in subdivision (iii) of this subparagraph. Except as excluded by subdivision (iv) or (v) of this subparagraph, an expenditure (regardless of how paid, whether in cash, notes, or stock in a taxable or nontaxable transaction) is a section 103(b)(6)(D) capital expenditure if—

(*a*) The capital expenditure was financed other than out of the proceeds of issues to the extent such issues are taken into account under paragraph (b)(2)(i)(*a*) of this section.

(*b*) The capital expenditures were paid or incurred during the 6-year period which begins 3 years before the date of issuance of the issue in question and ends 3 years after such date,

(*c*) The principal user of the facility in connection with which the property resulting from the capital expenditures is used and the principal user of the facility financed by the proceeds of the issue in question is the same person or are two or more related persons (as defined in section 103(b)(6)(C) and paragraph (e) of this section),

(*d*) Both facilities referred to in (*c*) of this subdivision were (during the period described in (*b*) of this subdivision or a part thereof) located in the same incorporated municipality or in the same county outside of the incorporated municipalities in such county), and

(*e*) The capital expenditures were properly chargeable to the capital account of any person or State or local governmental unit (whether or not such person is the principal user of the facility or a related person) determined, for this purpose, without regard to any rule of the Code which permits expenditures properly chargeable to capital account to be treated as current expenses. With respect to obligations issued on or after August 8, 1972, determinations under the preceding sentence shall be made by including any expenditure which may, under any rule or election under the Code, be treated as a capital expenditure (whether or not such expenditure is so treated). With respect to obligations issued on or after August 8, 1972, for purposes of this subparagraph, capital expenditures made with respect to a contiguous or integrated facility which is located on both sides of a border between two or more political jurisdictions are made with respect to a facility located in all such jurisdictions and, therefore, shall be treated as if they were made in each such political jurisdiction.

(iii) Amounts properly chargeable to capital account under subdivision (ii)(*e*) of this subparagraph include capital expenditures made by a State or local governmental unit with respect to an exempt facility or an industrial park, within the 6-year period described in subdivision (ii)(*b*) of this subparagraph, out of the proceeds of bond issues to which section 103(b)(1) did not apply by reason of section 103(b) (4) or (5) (relating to certain exempt activities and industrial parks). Thus, for example, the cost to the lessor of a leased plantsite financed out of the proceeds of an issue for an exempt air pollution control facility under section 103(b)(4)(F) and paragraph (g) of §1.103–8 would constitute a section 103(b)(6)(D) capital expenditure. However, in the case of an industrial park, only the land costs allocated on an area basis to the plantsite and the actual cost of any improvements made on the plantsite, or to be used principally in connection with the actual plantsite occupied by a principal user or a related person, shall be taken into account as capital expenditures. Where the actual amount of capital expenditures made with respect to a facility by a person (including a State or local governmental unit) other than the user of such facility (or a related person) cannot be ascertained, the fair market value of the property with respect to which the capital expenditures were made, at the time of such capital expenditures, shall be deemed to be the amount of such capital expenditures. In the case of a transaction which is not in form a purchase but which is treated as a purchase for Federal income tax purposes, the purchase price for Federal income tax purposes shall constitute a capital expenditure.

(iv) A section 103(b)(6)(D) capital expenditure shall not include any ''excluded expenditure'' described in (*a*) through (*e*) of this subdivision (iv).

(*a*) A capital expenditure is an excluded expenditure if either it is made by a public utility company which is not the principal user of the facility financed by the proceeds of the issue in question (or a related person) with respect to property of such company, or it is made by a State or local governmental unit with respect to property of such unit, and if in either case it meets all of the following three conditions: Such property of such company or unit (as the case may be) must be used to provide gas, water, sewage disposal services, electric energy, or telephone service. Such property must be installed in, or connected to, the facility but must not consist of property which is such an integral part of the facility that the cost of such property is ordinarily included as part of the acquisition, construction, or reconstruction cost of such facility. Such property must be of a type normally paid for by the user (or a related person) in the form of periodic fees based upon time or use.

(*b*) A capital expenditure is an excluded expenditure if it is made by a person other than the user, a related person, or a State or local governmental unit and if it is made with respect to tangible personal property (within the meaning of paragraph (c) of §1.48–1), or intangible personal property, leased to the user (or a related person) of a facility. However, the preceding sentence shall apply only if such personal property is leased by the manufacturer of such tangible or intangible personal property, or by a person in the trade or business of leasing property the same as, or similar to, such personal property, and only if, pursuant to general business practice, property of such type is ordinarily the subject of a lease.

(*c*) A capital expenditure is an excluded expenditure if it is made to replace property damaged or destroyed by fire, storm, or other casualty, to the extent that these expenditures do not exceed in dollar amount the fair market value (determined immediately before the casualty) of the property replaced.

(*d*) A capital expenditure is an excluded expenditure if it is required by a change made after the date of issue in a Federal or State law, or a local ordinance which has general application, or if it is required by a change made after such date in rules and regulations of general application issued under such law or ordinance.

(*e*) A capital expenditure is an excluded expenditure if it is required by or arises out of circumstances which could not reasonably be foreseen on the date of issue or which arise out of a mistake of law or fact. However, the aggregate dollar amount taken into account under this subdivision (*e*) with respect to any issue may not exceed $1 million. With respect to expenditures incurred prior to December 11, 1971, the dollar amount specified in the preceding sentence shall be $250,000.

(v)(*a*) If the assets of a corporation are acquired by another corporation in a transaction to which section 381(a) (relating to carryovers in certain corporate acquisitions) applies, the exchange of consideration by the acquiring corporation for such assets is not a section 103(b)(6)(D) capital expenditure by such acquiring corporation.

(*b*) However, if an exchange referred to in (*a*) of this subdivision occurs during the 6-year period beginning 3 years before the date of issuance of an issue of obligations and ending 3 years after such date, the transferor and transferee shall be treated as having been related persons for the portion of such 6-year period preceding the date of the exchange for purposes of determining whether section 103(b)(6)(D) capital expenditures have been made. For purposes of this subdivision (*b*), the date of an exchange to which section 381 applies shall be the date of distribution or transfer within the meaning of paragraph (b) of § 1.381(b)–1.

(*c*) If section 351(a) applies to a transfer of property to a corporation solely in exchange for its stock or securities, the issuance of such stock or securities in such exchange is not a section 103(b)(6)(D) capital expenditure by such corporation.

(*d*) However, if such a transfer referred to in (*c*) of this subdivision occurs during the 6-year period beginning 3 years before the date of issuance of an issue of obligations and ending 3 years after such date, and if, with respect to the property transferred, expenditures made within such period would have been section 103(b)(6)(D) capital expenditures if the transferor and transferee had been related persons for such period, then such expenditures shall be considered to be section 103(b)(6)(D) capital expenditures made by the transferee. In addition, if a transferor and transferee are related persons immediately following such transfer, such transferor and transferee shall also be treated as having been related persons for the portion of such 6-year period preceding the date of such transfer.

(*e*) For purposes of this subdivision (v), the term ''issue of obligations'' means an issue being tested for purposes of qualifying or continuing to qualify under an election pursuant to section 103(b)(6)(D) as to which an amount which would be a section 103(b)(6)(D) capital expenditure solely by reason of (*b*) or (*d*) of this subdivision must be taken into account.

(*f*) If with respect to an issue of obligations an expenditure would not have been a section 103(b)(6)(D) capital expenditure but for the application of (*b*) or (*d*) of this subdivision, and if such section 103(b)(6)(D) capital expenditure has the effect of making taxable the interest on an issue of obligations which qualified for exemption under section 103(b)(6)(A) and this paragraph, the loss of tax exemption for such interest shall begin not earlier than the date of such exchange or transfer referred to in this subdivision (v).

(vi) The issuer may make the election provided by section 103(b)(6)(D) and this paragraph (b)(2) (assuming that the bonds otherwise qualify under section 103(b)(6) by noting the election affirmatively at or before the time of issuance of the issue in question on its books or records with respect to the issue. The term ''books or records'' includes the bond resolution or other similar legislation for the issue in question as well as the bond transcript or other compilation of bond and bond-related documents. If the issuer fails to make an election at the time and in the manner prescribed in this paragraph (b)(2), the issue will not be treated as described in section 103(b)(6)(D), and interest thereon will be includible in gross income.

(c) *Refunding or refinancing issue exemption*—(1) *$1 million or less refunding* *issue.* Section 103(b)(6)(A) also provides that section 103(b)(1) shall not apply to any debt obligation issued by a State or local governmental unit as part of an issue the aggregate authorized face amount of which is $1 million or less, if substantially all of the proceeds of such issue are to be used—

(i) To redeem part of all of a prior issue substantially all of the proceeds of which were used to acquire, construct, reconstruct, or improve land or property of a character subject to the allowance for depreciation, or

(ii) To redeem part or all of a prior exempt small refunding issue.

(2) *10 million or less refinancing issue.* Section 103(b)(6)(H) provides that section 103(b)(1) shall not apply to any debt obligation issued by a governmental unit as part of an issue which is $10 million or less if the condition of section 103(b)(6)(H) is met and if substantially all of the proceeds are to be used—

(i) To redeem part or all of one or more prior exempt small issues, or

(ii) To redeem part or all of one or more prior exempt small refunding issues.

The condition of section 103(b)(6)(H) is that an election by the issuer of the $10 million exemption in lieu of the $1 million limit for a refunding issue may be made only if each prior issue being redeemed is an issue which qualified either for the $1 million exemption or, by reason of an election under section 103(b)(6)(D), for the $10 million exemption. In addition, in applying the capital expenditures test under section 103(b)(6)(D)(ii) and paragraph (b)(2)(i)(*b*) of this section to refinancing issues, section 103(b)(6)(D) capital expenditures are taken into account only for purposes of determining whether prior issues which were made under the section 103(b)(6)(D) election qualified under section 103(b)(6)(A) and would have continued to qualify under that section but for the redemption.

(d) *Certain prior issues taken into account*—(1) *In general.* Section 103(b)(6)(B) provides, in effect, that if (i) a prior issue specified in subparagraph (2) of this paragraph is an exempt small issue (including for this purpose an exempt small refunding issue) under section 103(b)(6)(A) and this section, and (ii) such prior issue is outstanding at the time of issuance of a subsequent issue, then in determining the aggregate face amount of such subsequent issue (for purposes of determining whether such issue is a $1 million or $10 million exempt small issue under section 103(b)(6)(A) and this section) there shall be taken into account the outstanding face amount of such prior exempt small issue. For purposes of this paragraph, the outstanding face amount of a prior exempt small issue does not include the face amount of any obligation which is to be redeemed from the proceeds of such subsequent issue.

(2) *Prior issues specified.* The face amount of an outstanding prior exempt small issue is taken into account under subparagraph (1) of this paragraph if—

(i) The proceeds of both the prior exempt small issue and of the subsequent issue (whether or not the State or local governmental unit issuing such obligation is the same unit for each such issue) are or will be used primarily with respect to facilities located or to be located in the same incorporated municipality or located or to be located in the same county outside of an incorporated municipality in such county (and, for purposes of this subdivision, on or after August 8, 1972, a contiguous or integrated facility which is located on both sides of a border between two or more political jurisdictions shall be treated as if it is entirely within each such political jurisdiction), and

(ii) The principal user of the financed facilities referred to in subdivision (i) of this subparagraph is or will be the same person or two or more related persons (as defined in section 103(b)(6)(C) and paragraph (e) of this section).

(3) *Rules of application.* The rules of this paragraph shall apply—

(i) Only in the case of outstanding prior exempt small issues which are industrial development bonds to which section 103(b)(1) would have applied but for the provisions of section 103(b)(6). Thus, for example, the provisions of this paragraph do not apply in respect of a prior issue of obligations issued on or before April 30, 1968. In addition, the provisions of this paragraph do not apply in respect of a prior issue for an exempt facility under section 103(b)(4) and § 1.103–8, or for an industrial park under section 103(b)(5) and § 1.103–9, whether or not the issue might also have qualified as an exempt small issue under section 103(b)(6)(A) and this section.

(ii) To all prior exempt small issues which meet the requirements of this paragraph. Thus, for example, in determining the aggregate face amount of an issue under section 103(b)(6)(A), the outstanding face amount of prior $1 million or $10 million exempt small issues which meet the requirements of this paragraph shall be taken into account in determining the aggregate face amount of a subsequent issue being tested for the $1 million small issue exemption. Similarly, in determining the aggregate face amount of an issue under section 103(b)(6)(A) and (D), the outstanding face amount of prior $1 million or $10 million exempt small issues which meet the requirements of this paragraph shall be taken into account in determining the aggregate face amount of a subsequent issue being tested for the $10 million small issue exemption.

(e) *Related persons.* For purposes of section 103(b) and §§ 1.103–7 through 1.103–11, the term ''related person'' means a person who is related to another person if, on the date of issue of an issue of obligations—

(1) The relationship between such persons would result in a disallowance of losses under section 267 (relating to disallowance of losses, etc., between related taxpayers) and section 707(b) (relating to losses disallowed, etc., between partners and controlled partnerships) and the regulations thereunder, or

(2) Such persons are members of the same controlled group of corporations, as defined in section 1563(a), relating to definition of controlled group of corporations (except that ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a)) and the regulations thereunder.

(f) *Disqualification of certain small issues.* (1) Section 103(b)(6) shall not apply to any obligation issued after April 24, 1979, which is part of an issue, a significant portion of the proceeds of which are to be used directly or indirectly to provide residential real property for family units. For purposes of the preceding sentence, the term ''residential real property for family units'' means residential rental projects (within the meaning of § 1.103–8(b)) and owner-occupied residences (within the meaning of section 103A).

(2) For purposes of paragraph (f)(1), a significant portion of the proceeds of an issue are used to provide residential real property for family units if 5 percent or more of the proceeds are so used.

(g) *Examples.* The application of the rules contained in section 103(b)(6) and this section are illustrated by the following examples:

*Example 1.* County A and corporation X enter into an arrangement under which the county will provide a factory which X will lease for 25 years. The arrangement provides (1) that A will issue $1 million of bonds on March 1, 1970, (2) that the proceeds of the bond issue will be used to acquire land in County A (but not in an incorporated municipality) and to construct and equip a factory on such land in accordance with X's specifications, (3) that X will rent the facility for 25 years at an annual rental equal to the amount necessary to amortize the principal and pay the interest on the outstanding bonds, and (4) that such payments by X and the facility itself shall be the security for the bonds. Although the bonds issued are industrial development bonds, the bonds are an exempt small issue under section 103(b)(6)(A) and this section since the aggregate authorized face amount of the bond issue is $1 million or less and all of the proceeds of the bond issue are to be used to acquire and improve land and acquire and construct depreciable property. The result would be the same if the arrangement provided that X would purchase the facility from A.

*Example 2.* The facts are the same as in example (1) except that, instead of acquiring land and constructing a new factory, the arrangement provides that A will acquire a vacant existing factory building and rebuild and equip the building in accordance with X's specifications. The bonds are an exempt small issue for the same reasons as in example (1).

*Example 3.* The facts are the same as in example (1) or (2) except that the financed facilities are additions to facilities which were financed by an issue of bonds to which section 103(b)(1) does not apply because such bonds were issued prior to May 1, 1968, or were subject to the transitional provisions of § 1.103–12. The bonds are an exempt small issue since neither of the prior bond issues are taken into account under section 103(b)(6)(B) and this section in determining the status of industrial development bonds which are issued after April 30, 1968, and which are not subject to the transitional provisions of §1.103–12.

*Example 4.* The facts are the same as in example (1) except that, subsequently, corporation X proposes to County A that A build a $400,000 warehouse located in Town M (an unincorporated town located in County A) for X under terms similar to the factory arrangement described in example (1). On the proposed issue date of the subsequent bond issue, $600,000 of the first exempt small issue will be outstanding. If A issues $400,000 of bonds for such purposes, the bonds will be an exempt small issue under section 103(b)(6) and this section since, under the rules of section 103(b)(6)(B) and paragraph (d) of this section, if the aggregate authorized face amount of the new issue and the outstanding prior exempt small issue will be $1 million or less, the new issue will be an exempt small issue. If, however, the aggregate authorized face amount of the prior issue outstanding on the date of the subsequent issue were in excess of $600,000, the subsequent issue would not qualify as an exempt small issue because (1) the combined aggregate face amount of the outstanding prior issue and the new issue would be in excess of $1 million, (2) the facilities financed by both issues are to be located in unincorporated areas in the same county, (3) the same taxpayer will be the principal user of both facilities, and (4) but for the rules of section 103(b)(6)(B) and paragraph (d) of this section the prior issue would be an exempt small issue.

*Example 5.* The facts are the same as in example (1) except that subsequently corporation X proposes to City P and City R (incorporated municipalities located in County A) that P and R each issue bonds and each build $1 million facilities to be located in Cities P and R for the use of X under terms similar to the arrangement in example (1). Each of the $1 million issues will be an exempt small issue because each proposed facility is located within a different incorporated municipality and the proceeds of the prior outstanding exempt small issue were used to construct facilities outside of an incorporated area.

*Example 6.* The facts are the same as in example (1) except that $95,000 of the $1 million will be used by the corporation as working capital. The bonds are an exempt small issue for the same reason as in example (1) since substantially all of the proceeds will be used for the acquisition of land and the construction of depreciable property.

*Example 7.* The facts are the same as in example (1) except that on November 1, 1969, County A issued $10 million of industrial development bonds, all of the proceeds of which were issued for the acquisition of land as the site for an industrial park within the meaning of section 103(b)(5) and §1.103–9. The proceeds of the $1 million of bonds issued in 1970 will be used to construct a factory for corporation X to be located in the industrial park. The bonds issued in 1970 are industrial development bonds within the meaning of section 103(b)(2) and §1.103–7. Since, however, the prior 1969 issue is not an issue to which section 103(b)(6)(A) applied (see paragraph (d)(3)(i) of this section), the bonds issued in 1970 are an exempt small issue for the reasons stated in example (1).

*Example 8.* County B enters into three separate arrangements with three unrelated corporations whereby the county will provide separate storage facilities for each corporation. The arrangement provides (1) that the county will issue bonds and loan to each corporation $250,000 of the proceeds which will be used to acquire land in the county and to construct the facilities, (2) that the rental payments by the corporations will be equal to the amount necessary to amortize the principal and pay the interest on any outstanding bonds issued by the county, and (3) that the payments by the corporations and the facilities themselves shall be the security for the industrial development bonds. For convenience, the county issues one series of bonds in the face amount of $750,000 rather than three separate series of bonds of $250,000 each. The issue is an exempt small issue under section 103(b)(6)(A) and paragraph (b)(1) of this section since the aggregate authorized face amount of the bond issue is $1 million or less, and all of the proceeds of the bond issue are to be used to acquire and improve land and acquire and construct depreciable property.

*Example 9.* City C and corporation Y enter into an arrangement under which C will provide a factory which Y will lease for 25 years. The arrangement provides (1) that C will issue $4 million of bonds on March 1, 1969, after making the election under section 103(b)(6)(D) and paragraph (b)(2) of this section, (2) that the proceeds of the bond issue will be used to acquire land in the city and to construct and equip a factory on such land in accordance with Y's specifications, (3) that Y will rent the facilities for 25 years at an annual rental equal to the amount necessary to amortize the principal and pay the interest on the outstanding bonds, (4) that such payments by Y and the facility itself shall be the security for the bonds, and (5) that, if corporation Y pays or incurs capital expenditures in excess of $1 million within 3 years from the date of issue which disqualify the bonds as an exempt small issue under section 103(b)(6)(D), it will either furnish funds to C to redeem such bonds at par or at a premium, or increase the rental payments to C in an amount sufficient to pay a premium interest rate. Although the bonds issued are industrial development bonds, they are an exempt small issue under section 103(b)(6)(A) by reason of the election under section 103(b)(6)(D) and paragraph (b)(2) of this section, since the aggregate authorized face amount of the bond issue is $5 million or less and all of the proceeds of the bond issue are to be used to acquire and improve land and acquire and construct depreciable property. The provisions for redemption of the bonds or an increase in rental if the bonds are disqualified as an exempt small issue under section 103(b)(6)(A) will not disqualify an otherwise valid election under section 103(b)(6)(D) and paragraph (b)(2) of this section.

*Example 10.* The facts are the same as in example (9) except that corporation Y subsequently proposed to the city that it build a $1 million warehouse next to the plant for the use of Y under terms similar to the factory arrangement. Assume further that the factory building was completed by March 1, 1970, and that on January 15, 1972, the proposed issue date of the subsequent bond issue, $2 million of the first exempt small issue will be outstanding. In determining the aggregate authorized face amount of the new issue, the original face amount of a prior outstanding issue must be reduced by that portion which is to be redeemed before it is added to the face amount of the new issue. Therefore, if the city issues $3 million of bonds to redeem the remaining $2 million of bonds and to construct the warehouse the bonds will be an exempt small issue under section 103(b)(6)(A) if an election is made under section 103(b)(6)(D) and paragraph (b)(2) of this section since (1) the face amount of the new issue ($3 million), plus (2) the face amount of the prior outstanding exempt small issue minus the amount of such issue to be refunded ($2 million minus $2 million), plus (3) capital expenditures during the preceding 3 years financed other than out of the proceeds of outstanding issues to which section 103(b)(6)(A) and paragraph (b) of this section applied ($2 million), do not exceed $5 million. If, however, the amount of the January 15, 1972, issue were $3½ million, the issue would not qualify as an exempt small issue under section 103(b)(6)(A) and paragraph (b)(2) of this section.

*Example 11.* The facts are the same as in example (9), except that on June 15, 1971, Y purchases from an unrelated motor carrier business a warehouse terminal in the same city at a cost of $250,000 and tractor-trailers and other automotive equipment based at the terminal at a cost of $1 million. This subsequent expenditure by Y has the effect of making the interest on the city C bonds includable in the gross income of the holders of such bonds as of June 15, 1971, because the face amount of the March 1, 1969, issue ($4 million) plus the subsequent capital expenditures within 3 years of the date of issue ($1,250,000) exceed $5 million. (See section 103(b)(6)(D) and paragraph (b)(2)(i) of this section.)

*Example 12.* The facts are the same as in example (9), except that in March, 1970, Y will move $3 million of additional used machinery and equipment into the factory from its factory in another city. The expenditures for such machinery and equipment were incurred by Y more than 3 years prior to the date of issue of the bonds. The transfer of such used equipment into city C does not constitute a section 103(b)(6)(D) capital expenditure within the meaning of paragraph (b)(2)(ii) of this section since the expenditures with respect to such property were incurred more than 3 years prior to the date of issue of the bonds. Had the capital expenditures with respect to such property been incurred during the 6-year period beginning 3 years before the date of issue of the bonds and in the 3 years after such date, they would constitute section 103(b)(6)(D) capital expenditures.

*Example 13.* The facts are the same as in example (9), except that in March 1970, corporation Y enters into an arrangement with respect to machinery and equipment to be used in the facility. The arrangement is labeled by the parties as a lease but is treated as a sale for Federal income tax purposes. The amount treated as the purchase price of the machinery and equipment is a section 103(b)(6)(D) capital expenditure.

*Example 14.* On February 1, 1970, city D issues $5 million of its bonds to finance construction of an addition to the manufacturing plant of corporation Z. The bonds will be secured by the facility and lease payments to be made by Z which will be sufficient to pay the principal and interest on such bonds. Assume that the bonds qualify as an exempt small issue under section 103(b)(6)(A) pursuant to an election under section 103(b)(6)(D) and paragraph (b)(2) of this section. On February 1, 1971, D plans to issue $1 million of its bonds to construct a pollution control facility to be leased to Z for use at its manufacturing plant. The rental payments from the lease will be sufficient to pay the principal and interest on the bonds. The bonds will be secured by such facility and the lease payments. Capital expenditures for the pollution control facility will be paid or incurred beginning before February 1, 1973. Although the pollution control facility is an exempt facility under section 103(b)(4)(F) and paragraph (g) of §1.103–8, amounts used for the pollution control facility shall be considered to be a section 103(b)(6)(D) capital expenditure and the interest on the February 1, 1970, issue will become taxable as of the date such capital expenditure began to be paid or incurred. See section 103(b)(6)(G) and paragraph (b)(2)(i) of this section.

*Example 15.* On February 1, 1970, City E issues $500,000 of its bonds to acquire and develop an industrial park within the meaning of section 103(b)(5) and paragraph (b) of §1.103–9. The park consists of 100 acres and is divided into one 50 acre plantsite and 4 smaller sites. The aggregate acquisition cost of the undeveloped land is $150,000 or an average per acre cost of $1,500. Roads, sidewalks, sewers, utilities, sewage, and waste disposal facilities serving the entire industrial park cost $300,000. On September 1, 1970, E leases to corporation Y for 30 years the 50 acre plantsite (with an allocated cost of $75,000) and a railroad spur track from the railroad right of way to Y's plantsite for Y's exclusive use. The spur track was constructed using $50,000 of the proceeds of the industrial park bond issue. E also proposes to issue on September 1, 1970, $4,875,000 of its bonds to construct and equip a building on the leased plantsite to be leased to Y at an additional rental sufficient to pay the principal and interest on this issue of bonds. The September 1, 1970, issue will be an exempt small issue under section 103(b)(6)(A) pursuant to an election under section 103(b)(6)(D) and paragraph (b)(2) of this section since the sum of the amount of the second issue ($4,875,000) and the capital expenditures allocated to the plantsite ($75,000 for 50 acres of land plus $50,000 for the railroad spur tract, totaling $125,000) does not exceed $5 million. The sum of $300,000 which was spent in development of the industrial park provided facilities which will serve or benefit the users generally and hence under paragraph (b)(2)(iii) of this section is not considered to have provided facilities as to which Y will be the principal user.

*Example 16.* On June 1, 1970, corporation Z simultaneously enters into separate arrangements with City F and City G under which each city will issue a $5 million exempt small issue of bonds the proceeds of which will be used by Z to construct separate facilities in each city. By June 1, 1971, the facilities have been completed in the respective cities. On January 1, 1972, Cities F and G, through a valid legal proceeding, merge into a new City FG. Since in this case F and G were separate cities on June 1, 1970 (the date of the bond issues), the factories are not considered to be located in the same incorporated municipality. Accordingly, each $5 million issue by City F and G will continue to qualify as an exempt small issue.

*Example 17.* On June 1, 1973, City H issues an exempt small issue of $4.75 million to finance a facility of corporation S to be located in City H. On October 1, 1974, S and corporation T, previously unrelated to S, consummated a statutory merger which qualifies as a reorganization described in section 368(a)(1)(A) and thus as a transaction described in section 381(a). In the transaction, T transferred to S assets with a fair market value of $1.5 million in exchange for stock of S, $300,000 of securities of S, and $100,000 cash. On March 23, 1971, T made $400,000 of capital expenditures for an addition to its factory located in City H. For purposes of testing the H issue of June 1, 1973, such expenditures would have been section 103(b)(6)(D) capital expenditures if T and S had been related persons. Under the provisions of paragraph (b)(2)(v)(*a*) of this section, the exchange of $1.5 million of stock, securities, and cash by S does not constitute a section 103(b)(6)(D) capital expenditure. Since, however, S and T are treated as related persons starting 3 years prior to the date of issue of the obligations, the $400,000 of expenditures by T constitute section 103(b)(6)(D) capital expenditures. Thus, the interest on the June 1, 1973, issue of obligations would become taxable (since the $5 million limit would be exceeded) on the date of the merger.

*Example 18.* In 1965 City I issues $10 million of industrial development bonds to construct and equip a factory for corporation Z. In 1975 the remaining principal amount of the bonds outstanding is $4.1 million. If I issues $4.5 million of bonds to redeem the balance of the prior issue, and for other purposes, such issue cannot qualify as an exempt small issue under section 103(b)(6)(D) and paragraph (b)(2) of this section even though at the time of issue the interest on the 1965 bonds was tax-exempt since the prior issue must be one which qualified under section 103(b)(6)(A) and this section. Further, the 1975 issue will be an issue of industrial development bonds notwithstanding the provisions of paragraph (d)(2) of §1.103–7 which provides that certain bonds issued to refund an issue of obligations issued on or before April 30, 1968 (or January 1, 1969, in certain cases) will not be so treated. Paragraph (d)(2) of §1.103–7 is not applicable because the 1975 issue makes funds available for a purpose other than the debt service obligation on the 1965 bonds.

*Example 19.* In 1969 City J issues $4 million of industrial development bonds which qualify as an exempt small issue under section 103(b)(6)(A) pursuant to an election under section 103(b)(6)(D) and paragraph (b)(2) of this section. In 1971, by reason of a $2 million addition to the factory built with the proceeds of the issue, the 1969 exempt small issue loses its tax-exempt status. In 1972, the city issues a $5 million issue to redeem the prior 1969 issue. The redemption issue will not qualify as an exempt small issue since the prior 1969 issue did not continue to qualify under section 103(b)(6)(A) and this section.

[T.D. 7199, 37 FR 15494, Aug. 3, 1972; 37 FR 16177, Aug. 11, 1972; 37 FR 17826, Sept. 1, 1972, as amended by T.D. 7511, 42 FR 54285, Oct. 5, 1977; T.D. 7840, 47 FR 46084, Oct. 15, 1982; 51 FR 16299, May 2, 1986]

### § 1.103–11 Bonds held by substantial users.

(a) *In general.* Section 103(c) (4), (5), or (6) (relating respectively to interest on bonds to finance certain exempt facilities, interest on bonds to finance industrial parks, and the exemption for certain small issues of industrial development bonds) does not apply, as provided in section 103(c)(7), with respect to any obligation for any period during which such obligation is held either by a person who is a substantial user of the facilities with respect to which the proceeds of such obligation were used or by a related person (within the meaning of section 103(c)(6)(C) and paragraph (e) of § 1.103–10). Therefore, in such a case, interest paid on such an obligation is includable in the gross income of a substantial user (or related person) for any period during which such obligation is held by such user (or related person).

(b) *Substantial user.* In general, a substantial user of a facility includes any nonexempt person who regularly uses a part of such facility in his trade or business. However, unless a facility, or a part thereof, is constructed, reconstructed, or acquired specifically for a nonexempt person or persons, such a nonexempt person shall be considered to be a substantial user of a facility only if (1) the gross revenue derived by such user with respect to such facility is more than 5 percent of the total revenue derived by all users of such facility or (2) the amount of area of the facility occupied by such user is more than 5 percent of the entire usable area of the facility. Under certain facts and circumstances, where a nonexempt person has a contractual or preemptive right to the exclusive use of property or a portion of property, such person may be a substantial user of such property. A substantial user may also be a lessee or sublessee of all or any portion of the facility. A licensee or similar person may also be a substantial user where his use is regular and is not merely a casual, infrequent, or sporadic use of the facility. Absent special circumstances, individuals who are physically present on or in the facility as employees of a substantial user shall not be deemed to be substantial users.

(c) *Examples.* The application of section 103(c)(7) and this section are illustrated by the following examples:

*Example 1.* Pursuant to an arrangement with corporation X, County A issues $4 million of its bonds (an exempt small issue under section 103(c)(6)(A) pursuant to an election under section 103(c)(6)(D) and paragraph (b)(2) of § 1.103–10) and will use the proceeds to finance construction of a manufacturing facility which is to be leased to X for an annual rental of $500,000. X subleases space to a restaurant operator at an annual rental of $25,000 for the operation of a canteen and lunch counter for the convenience of X's employees. The canteen is required to be open at least 5 days each week (except holidays) from 8:30 a.m. to 5 p.m., and the lunch counter must be in operation during the noon hour. The canteen regularly sells cigarettes, candy, and soft drinks, and uses advertising displays and dispensers with product names. The space physically occupied and the amount of revenue derived by the restaurant operator are more than 5 percent of the respective amounts with respect to the entire facility. Both X and the restaurant operator are substantial users. However, absent special circumstances none of X's employees, the employees of the restaurant operator, or the customers or salesmen who regularly visit the premises to do business either with X or the restaurant operator are substantial users. Similarly, the manufacturers, distributors, and dealers of products sold in the canteen ordinarily are not substantial users.

*Example 2.* The facts are the same as in example (1) except that X rents food and beverage vending machines from a local dealer. The machines are regularly serviced by the local dealer under a contract with X. Title to and ownership of the machines are retained by the dealer. The local dealer is not deemed to be a substantial user if the revenue derived by such dealer from, and the space occupied by, such machines do not exceed 5 percent of the respective amounts with respect to the entire facility.

*Example 3.* City B proposes to issue $2 million of bonds which qualify as an exempt small issue under section 103(c)(6)(A) pursuant to an election under section 103(c)(6)(D) and paragraph (b)(2) of § 1.103–10 in order to construct a medical building for certain physicians and dentists. The facility will contain 30 offices to be leased on equal terms and for the same rental rates to each physician or dentist for use in his trade or business. Each physician or dentist will be a substantial user of the facility since the facility is being constructed specifically for such physicians and dentists. The result would be the same in the case of an office building for general commercial use.

*Example 4.* City C proposes to expand the airport it owns and operates with the proceeds of its bonds which qualify as bonds issued for an exempt facility under section 103(c)(4)(D) and paragraph (e) of §1.103–8 and which are secured by a pledge of airport revenues. The airport is serviced by several commercial airlines which have long-term agreements with C for the use of runways, terminal space, and hangar and storage facilities. Each of the airlines either occupies more than 5 percent of the usable space of, or derives more than 5 percent of the revenue derived with respect to, the airport. C also leases counter and vehicle servicing and parking areas to car rental companies, space for restaurants, kiosks for the sale of newspapers and magazines, and space for the operations of a charter plane company. The latter operates its own planes, offers flying lessons and services, and stores private planes for local businesses and individuals. An airport limousine company has an exclusive franchise for passenger pickup at the terminal. Other taxi, transfer, freight, and express companies regularly deliver passengers and freight to the terminal but do not have space regularly assigned to them, nor do they have operating agreements with C. Various business concerns have advertising product displays in the terminal building. In addition to regular telephone service, coin-operated telephones, provided by the telephone company, are located throughout the terminal, at locations specified by C. None of the above exceed the 5-percent limitations of paragraph (b) of this section and the bond proceeds will not be specifically used for any of them. Only the commercial airlines, which violate the 5-percent limitations, are substantial users of the airport.

*Example 5.* City D issues $25 million of its revenue bonds and will use $10 million of the proceeds to finance construction of a sports facility which qualifies as an exempt facility under section 103(c)(4)(B) and paragraph (c) of §1.103–8, $8 million to acquire and develop land as the site for an industrial park within the meaning of section 103(c)(5) and §1.103–9, and $7 million to finance the construction of an office building to be used exclusively by the city, an exempt person. The revenues from the sports facility and the industrial park and all the facilities themselves will be the security for the bonds. The sports facility and the industrial park sites will be used in the trades of businesses of nonexempt persons. The bonds are industrial development bonds, but under the provisions of paragraph (a)(1) of §1.103–8 and paragraph (a) of §1.103–9, the interest on the $25 million issue will not be includable in gross income. However, the interest on bonds held shall be includable in the gross income of a substantial user of either the sports facility or the industrial park if such substantial user holds any of the obligations of the $25 million issue. The 5-percent limitations of paragraph (b) of this section are applied separately with respect to each facility.

*Example 6.* Authority E issues $4 million of bonds which qualify as an exempt small issue under section 103(c)(6)(A) pursuant to an election under section 103(c)(6)(D) and paragraph (b)(2) of §1.103–10 in order to construct a bank building on the grounds of an airport. In addition, E issues $40 million to expand the airport. The bank will not derive revenue in excess of 5 percent of the revenue derived with respect to the airport nor will it occupy more than 5 percent of the usable area of such airport. The bank will be a substantial user of the bank building constructed with the proceeds of the $4 million issue since the facility was constructed specifically for the bank. However, the bank will not be a substantial user with respect to the airport because it does not exceed the 5-percent limitations of paragraph (b) of this section. Had E issued one issue of $44 million in order to expand the airport and construct a bank building, the bank would be a substantial user of the entire facility since the $44 million issue was being used to construct a facility a portion of which was specifically for the bank.

[T.D. 7199, 37 FR 15499, Aug. 3, 1972; 37 FR 16177, Aug. 11, 1972]

### § 1.103–16 Obligations of certain volunteer fire departments.

(a) *General rule.* An obligation of a volunteer fire department issued after December 31, 1980, shall be treated as an obligation of a political subdivision of a State for purposes of section 103(a)(1) if—

(1) The volunteer fire department is a qualified volunteer fire department within the meaning of paragraph (b) of this section, and

(2) Substantially all of the proceeds of the issue of which the obligation is a part are to be used for the acquisition, construction, reconstruction, or improvement of a fire house or fire truck used or to be used by the qualified volunteer fire department.

An obligation of a volunteer fire department shall not be treated as an obligation of a political subdivision of a State for purposes of section 103(a)(1) unless both conditions set forth in this paragraph (a) are satisfied.

Thus, for example, if an obligation is issued by an ambulance and rescue squad that is a qualified volunteer fire department as required by paragraph (a)(1) of this section, but substantially all of the proceeds of the issue of which the obligation is a part are to be used for the furnishing of emergency medical services, rather than for the purposes specified in paragraph (a)(2) of this section, the obligation shall not be treated as an obligation of a political subdivision of a State for purposes of section 103(a)(1).

(b) *Definition of qualified volunteer fire department.* For purposes of this section, the term ''qualified volunteer fire department'' means an organization—

(1) That is organized and operated to provide firefighting services or emergency medical services in an area within the jurisdiction of a political subdivision, and

(2) That is required to furnish firefighting services by written agreement with the political subdivision, and

(3) That serves persons in an area within the jurisdiction of the political subdivision that is not provided with any other firefighting services.

The requirement of paragraph (b)(2) of this section that a qualified volunteer fire department be required to furnish firefighting services by written agreement with the political subdivision may be satisfied by an ordinance or statute of the political subdivision that establishes, regulates, or funds the volunteer fire department. A volunteer fire department does not fail to satisfy the requirement of pargraph (b)(3) of this section by furnishing or receiving firefighting services on an emergency basis, or by cooperative agreement with other fire departments, to or from areas outside of the area that the volunteer fire department is organized and operated to serve. The fact that tax revenues of a political subdivision served by a volunteer fire department contribute toward the support of the volunteer fire department in the form of salary, purchase of equipment, or other defrayment of expenses will not prevent the volunteer fire department from being a ''qualified volunteer fire department'' within the meaning of this paragraph (b). Moreover, an obligation of a volunteer fire department receiving such support may qualify as an obligation of a political subdivision within the meaning of section 103(a)(1) independently of section 103(i) and this section if the requirements of section 103(a)(1) are satisfied. See § 1.103–1(b) for rules relating to qualification under section 103(a)(1).

(c) ''*Substantially all*'' *test.* Substantially all of the proceeds of an issue are used for the purposes specified in paragraph (a)(2) of this section if 90 percent or more of the proceeds are so used. Thus, for example, if more than 10 percent of the proceeds of an obligation issued by a qualified volunteer fire department are used for the purchase of an ambulance or for rescue equipment not to be used in providing fire fighting services, interest on the obligation is not exempt from tax under section 103(i) and this section. In computing this percentage—

(1) Costs are allocated between providing a firehouse or firetruck and other uses of the proceeds on a pro rata basis; and

(2) The rules set forth in § 1.103–8(a)(1)(i), relating to amounts allocable to exempt and nonexempt uses and amounts chargeable to capital account, apply.

(d) *Refunding issues.* An obligation which is part of an issue issued by a qualified volunteer fire department after December 31, 1980, part or all of the proceeds of which issue are used directly or indirectly to pay principal, interest, call premium, or reasonable incidental costs of refunding a prior issue qualifies as an obligation of a political subdivision under section 103(i) and this section only if—

(1) The prior issue was issued by a qualified volunteer fire department;

(2) Substantially all of the proceeds of the prior issue were used for the purposes described in paragraph (a)(2) of this section;

(3) The prior issue was issued after December 31, 1980; and

(4) The refunding issue is issued not more than 180 days before the date on which the last obligation of the prior issue is discharged (within the meaning of § 1.103–13)(b)(11)).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* The County M Volunteer Fire and Rescue Association provides firefighting, ambulance, and emergency medical services in County M. The board of county commissioners of County M contracts with the County M Volunteer Fire and Rescue Association for these services, and County M is not served by any other firefighting association. On August 1, 1981, the Association issues an obligation for funds to purchase a new fire truck, a new ambulance, and rescue equipment not to be used for fighting fires. Funds to be used for the purchase of the ambulance and rescue equipment constitute more than 10 percent of the proceeds of the obligation. Thus, substantially all of the proceeds of the obligations are not used for one of the purposes described in paragraph (a)(2) of this section. Although the County M Volunteer Fire and Rescue Association is a qualified volunteer fire department under paragraph (b) of this section because it provides firefighting and emergency medical services in an area within County M which is not provided with any other firefighting services and is required to provide these services by written agreement with County M, the August 1, 1981, obligation of County M Volunteer Fire and Rescue Association will not be treated as an obligation of a political subdivision of a State under section 103(i) and paragraph (a) of this section because substantially all of the proceeds of the obligation are not to be used for a purpose described in section 103(i)(1)(B) and paragraph (a)(2) of this section. Accordingly, interest on the August 1, 1981, obligation of County M Volunteer Fire and Rescue Association is not exempt from gross income under section 103(a)(1).

*Example 2.* County N Volunteer Fire Department provides firefighting services in County N by contract with the county, which is not served by any other firefighting association. On June 15, 1982, County N Volunteer Fire Department issues its obligation for funds to construct an addition to its firehouse to house a rescue squad, the rescue squad's vehicle, and rescue equipment not to be used in firefighting. Although the County N Volunteer Fire Department is a qualified volunteer fire department under paragraph (b) of this section, interest on its June 15, 1982, obligation will not be exempt from tax under section 103(i) and this section because the proceeds of this obligation will not be used for the purposes described in paragraph (a) of this section.

*Example 3.* The County O Volunteer Fire and Rescue Association provides firefighting, ambulance, and emergency medical services in County O. The board of county commissioners of County O contracts with the County O Volunteer Fire and Rescue Association for these services, and County O is not served by any other firefighting association. On September 1, 1983, the Association issues its obligations for funds to construct a new building to house its firefighting, ambulance, and rescue functions. Although the ambulance and rescue equipment will occupy space in the projected facility, the cost allocable on a pro rata basis to providing housing for the ambulance and rescue equipment represents less than 10 percent of the proceeds of the obligations. Thus, substantially all of the proceeds of the obligations are used for one of the purposes described in paragraph (a)(2) of this section. The County O Volunteer Fire and Rescue Association is a qualified volunteer fire department under paragraph (b) of this section because it provides firefighting and emergency medical services in an area within County O which is not provided with any other firefighting services and is required to provide these services by written agreement with County O. The obligations of County O Volunteer Fire and Rescue Association will be treated as obligations of a political subdivision of a State under section 103(i) and paragraph (a) of this section because the obligations are those of a qualified volunteer fire department and because substantially all of the proceeds of the obligations are to be used for a purpose described in section 103(i)(1)(B) and paragraph (a)(2) of this section. Accordingly, interest on the September 1, 1983, issue of obligations of County O Volunteer Fire and Rescue Association is exempt from gross income under section 103(a)(1).

[T.D. 7901, 48 FR 32981, July 20, 1983]

## § 1.103(n)–1T Limitation on aggregrate amount of private activity bonds (temporary).

Q–1: What does section 103(n) provide?

A–1: Interest on an issue of private activity bonds will not be tax exempt unless the aggregate amount of bonds issued pursuant to that issue, when added to (i) the aggregate amount of private activity bonds previously issued by the issuing authority during the calendar year and (ii) the portion of that year's private activity bond limit that the issuing authority has elected to carry forward to a future year, does not exceed the issuing authority's private activity bond limit for that calendar year. See A–4 of §1.103(n)–4T with respect to private activity bonds issued under a carryforward election.

Q–2: What is the effective date of section 103(n)?

A–2: In general, section 103(n) applies to private activity bonds issued after December 31, 1983. Section 103(n) does not apply to any issue of obligations, however, if there was an inducement resolution (or other comparable preliminary approval) for the project before June 19, 1984, and the issue for such project is issued before January 1, 1985. An issue of obligations will be considered to be issued for the project pursuant to the inducement resolution in existence before June 19, 1984, to the extent that the nature, character, and purpose of the facility has not changed in any material way, and to the extent that the capacity of the facility has not increased materially; in addition, the issue of obligations must be for the same or a related initial owner, manager, or operator. See §1.103–10(e) for the definition of related persons. See A–16 of §1.103(n)–3T with respect to certain projects preliminarily approved before October 19, 1983. The transitional rules provided by section 631(c) of the Tax Reform Act of 1984 do not apply to section 103(n). See §1.103–13(b)(6) for the rules relating to the date of issue of obligations.

Q–3: If an issue of private activity bonds causes the issuer's private activity bond limit to be exceeded, what is the effect on that issue?

A–3: If an issue of private activity bonds causes the issuing authority's private activity bond limit to be exceeded, no portion of that issue will be treated as obligations described in section 103(a), and interest paid on the issue will be subject to Federal income taxation.

Q–4: If an issue of private activity bonds causes the issuer's private activity bond limit to be exceeded, what is the effect on previous issues of private activity bonds that met the requirements of section 103(n) when issued?

A–4: Private activity bonds issued as part of an issue that met the private activity bond limit when issued continue to meet the requirements of section 103(n) even though a subsequent issue causes the aggregate amount of private activity bonds issued by an issuing authority to exceed the authority's private activity bond limit for the calendar year.

*Example*. The following example illustrates the provisions of A–3 and A–4 of this §1.103(n)–1T:

*Example*. The State ceiling for State Z for 1986 is $200 million. City M, within the State, and State Z itself are authorized to issue private activity bonds. Under the allocation formula provided by the Governor of State Z, City M has a private activity bond limit of $50 million; the balance of the State ceiling is allocated to State Z. On June 1, 1986, City M issues a $75 activity bonds. On September 1, 1986, State Z issues a $150 million issue of private activity bonds. Based on these facts, the obligations of City M do not meet the requirements of section 103(n) since the aggregate amount of private activity bonds issued by City M in 1986 exceeded its private activity bond limit for such year; thus, such obligations are not described in section 103(a). That the State Z issue caused the aggregate amount of private activity bonds issued in the State during 1986 to exceed the State ceiling does not cause such obligations to fail to meet the requirements of section 103(n).

Q–5: What is the aggregate amount of private activity bonds issued as part of an issue?

A–5: The aggregate amount of private activity bonds issued as part of an issue is the face amount of the issue.

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C. 103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39316, Oct. 5, 1984]

### § 1.103(n)–2T Private activity bond defined (temporary).

Q–1: What is the definition of the term ''private activity bond''?

A–1: In general, for purposes of §§1.103(n)–1T through 1.103(n)–6T, the term ''private activity bond'' means any industrial development bond or student loan bond the interest on which is exempt from tax under section 103(a) (without application of section 103(n)). See §1.103–7(b) for the definition of the term ''industrial development bond.'' See A–17 of this §1.103(n)–2T for the definition of the term ''student loan bond.'' There are five exceptions to the general definition of the term ''private activity bond''; the exceptions include the exception for the Texas Veterans' Bond Program, the residential rental property exception, the exception for certain facilities described in section 103(b)(4) (C) or (D), and the refunding obligation exception. These exceptions are described in A–2 through A–16 of this §1.103(n)–2T. In addition, the term ''private activity bond'' does not include any issue of obligations if there was an inducement resolution (or other comparable preliminary approval) for the project before June 19, 1984, and the issue for that project is issued before January 1, 1985. See A–2 of §1.103(n)–1T.

Q–2: To which obligations does the exception for the Texas Veterans' Bond Program apply?

A–2: The term ''private activity bond'' does not include general obligation bonds issued under the Texas Veterans' Bond Program if the proceeds of the issue, other than an amount that is not a major portion of the proceeds, are used to make loans of up to $20,000 for the purchase of land for purposes authorized by such program as in effect on June 19, 1984. The use of the proceeds may be established by the affidavit of the veteran receiving the loan. For purposes of this exception to the definition of the term ''private activity bond,'' the use of more than 25 percent of the proceeds of an issue of obligations will constitute the use of a major portion of such proceeds.

Q–3: To which obligations does the residential rental property exception apply?

A–3: The term ''private activity bond'' does not include any obligation issued to provide projects for residential rental property (including property functionally related and subordinate to any such facility), as described in section 103(b)(4)(A) and §1.103–8(b). In addition, the term ''private activity bond'' does not include any housing program obligation under section 11(b) of the United States Housing Act of 1937.

Q–4: To which obligations does the exception for certain facilities described in section 103(b)(4) (C) or (D) apply?

A–4: Section 103(n)(7)(C) provides that the term ''private activity bond'' does not include any obligation issued as part of an issue to provide convention or trade show facilities, as described in section 103(b)(4)(C) and §1.103–8(d) (including property functionally related and subordinate to any such facilities), if the property so described is owned by, or on behalf of, a governmental unit. In addition, the term ''private activity bond'' does not include any obligation issued as part of an issue to provide airports, docks, wharfs, mass commuting facilities, or storage or training facilities directly related to any of the foregoing facilities, as described in section 103(b)(4)(D) and §1.103–8(e) (including property functionally related and subordinate to any such facilities), if the property so described is owned by, or on behalf of, a governmental unit. See §1.103–8(a)(3), in general, for the definition of the term ''functionally related and subordinate.'' For purposes of this exception to the definition of the term ''private activity bond,'' the term ''mass commuting facilities'' includes ''qualified mass commuting vehicles,'' as defined in section 103(b)(9), that are associated with a mass commuting facility described in §1.103–8(e)(2)(iv). Obligations issued as part of an issue to provide parking facilities, as described in section 103(b)(4)(D), are not excepted from the definition of the term ''private activity bond;'' however, parking facilities may be functionally related and subordinate to another facility described in section 103(b)(4) (C) or (D).

Q–5: When is property described in section 103(b)(4) (C) or (D) owned by, or on behalf of, a governmental unit?

A–5: In general, property described in section 103(b)(4) (C) or (D) will be considered to be owned by a governmental unit if a governmental unit is the owner of the property for Federal income tax purposes generally. See A–5 of §1.103(n)–3T for the definition of the term ''governmental unit''. In general, property described in section 103(b)(4) (C) or (D) will be considered to be owned on behalf of a governmental unit if a constituted authority empowered to issue obligations on behalf of a governmental unit is the owner of the property for Federal income tax purposes generally. Whether the property is owned by, or on behalf of, a governmental unit will be determined on the basis of the facts and circumstances of each particular case. The fact that the governmental unit's or constituted authority's obligation to pay principal and interest on an obligation is limited to revenues from fees collected from users of the property provided with the proceeds of such obligation will not, in itself, cause such property to be treated as not owned by, or on behalf of, the governmental unit. In order to qualify for the exception described in section

103(n)(7)(C), the property must be owned by, or on behalf of, the governmental unit throughout the term of the issue. See A–10 of this § 1.103(n)–2T with respect to the consequences of a transfer of ownership.

Q–6: Will property described in section 103(b)(4) (C) or (D) that is leased to a non-governmental entity be treated as owned by, or on behalf of, a governmental unit if the lessee is the owner of the property for Federal income tax purposes generally solely by reason of the length of the lease?

A–6: If property, or any portion thereof, is leased to a non-governmental entity and if, for Federal income tax purposes generally, the lessee is the owner of the property solely by reason of the length of the lease, then, for purposes of §§ 1.103(n)–1T through 1.103(n)–6T (but not for other Federal income tax purposes, such as whether payments under the lease constitute deductible rental payments), the governmental unit will be treated as the owner of the property if the lessee elects not to claim depreciation or an investment credit with respect to such property. See A–7 of this § 1.103(n)–2T for the rules describing the method of making this election. For purposes of §§ 1.103(n)–1T through 1.103(n)–6T, the term ''non-governmental entity'' means a person other than a governmental unit or a constituted authority empowered to issue obligations on behalf of a governmental unit. The fact that a non-governmental entity lessee elects not to claim depreciation or an investment credit with respect to property does not, however, ensure that the property will be treated as owned by, or on behalf of a governmental unit for purposes of §§ 1.103(n)–1T through 1.103(n)–6T. Thus, for example, if the lessee is the owner of the property for Federal income tax purposes generally other than solely because of the length of the lease, the obligations issued as part of the issue are private activity bonds notwithstanding that the lessee elected not to claim depreciation or an investment credit with respect to the property.

Similarly, even if a governmental unit is the owner of property for Federal income tax purposes generally, the property will not be treated as owned by, or on behalf of, a governmental unit for purposes of §§ 1.103(n)–1T through 1.103(n)–6T if the lease under which such property is leased to a non-governmental entity provides for significant front end loading of rental accruals or payments. See A–12 of this § 1.103(n)–2T with respect to significant front end loading of rental accruals or payments.

Q–7: What must a lessee do in order to elect not to take depreciation or an investment credit with respect to property described in section 103(b)(4) (C) or (D)?

A–7: The lessee must make the election at the time the lease is executed. The election must include a description of the property with respect to which the election is being made; the name, address, and TIN of the issuing authority; the name, address, and TIN of the lessee; and the date and face amount of the issue the proceeds of which are to be used to provide the property. The election must be signed by the lessee, if a natural person, or by a duly authorized official of the lessee. The issuing authority must be provided with a copy of the election. The issuing authority and the lessee must retain copies of the election in their respective records for the entire term of the lease. In addition, the lease, and any publicly recorded document recorded in lieu of such lease, must state that neither the lessee nor any successor in interest under the lease may claim depreciation or an investment credit with respect to such property. This election may be made with respect to property whether or not such property otherwise would be eligible for depreciation or an investment tax credit. See section 7701(a)(41) for the definition of the term ''TIN''.

Q–8: Is the election not to claim depreciation or an investment credit revocable?

A–8: No, the election is irrevocable. In addition, the election is binding on all successors in interest under the lease regardless of whether the obligations remain outstanding. If a successor in interest claims depreciation or an investment credit with respect to property for which such an election has been made, such property will be considered transferred to a non-governmental entity. See A–10 of this §1.103(n)–2T with respect to the consequences of such a transfer.

Q–9: Where obligations are issued to provide all or any portion of a facility described in section 103(b)(4) (C) or (D), must all of the property described in section 103(b)(4) (C) or (D) that is part of such facility be owned by, or on behalf of, a governmental unit in order for such obligations to qualify for the exception to the definition of the term "private activity bond" provided in section 103(n)(7)(C)?

A–9: Generally, yes. If obligations are issued to provide all or any portion of a facility described in section 103(b)(4) (C) or (D), the obligations comprising such issue will not qualify for the exception to the definition of the term "private activity bond" provided in section 103(n)(7)(C) unless all of the property described in section 103(b)(4) (C) or (D) that is part of (or functionally related and subordinate to) the facility being financed is owned by, or on behalf of, a governmental unit throughout the term of the issue. For this purpose, the facility being financed will be construed to include the entire airport, dock, etc., under consideration and not merely the part of the facility being provided with the proceeds of the issue. For example, the term facility, when used in reference to an airport, will be considered to include all property that is part of, or included in, that airport under §1.103–8(e)(2)(ii)(*a*), including all property functionally related and subordinate thereto under §1.103–8 (a)(3) and (e)(2)(ii)(*b*). Thus, if the proceeds of an issue are used to provide a hangar at an airport described in section 103(b)(4)(D), that airport is considered as being financed with such issue, and if any portion of that airport, including property functionally related and subordinate thereto, is treated as owned by a non-governmental entity, that issue does not qualify for the exception of the definition of the term "private activity bond" provided in section 103(n)(7)(C).

There are three exceptions to this rule, however. First, if any property otherwise would be considered part of the facility financed and such property was not provided with proceeds of any obligation described in section 103(a), such property will not be considered part of the facility being financed.

Second, if any property otherwise would be considered part of the facility being financed and such property was part of such facility on or before October 5, 1984, such property will not be considered part of the facility being financed. For this purpose, property will be considered part of the facility on or before October 5, 1984, if any person was under a binding contract to acquire or construct such property to be a part of such facility on October 5, 1984.

Third, property will not be considered part of the facility being financed if such property (i) is land, a building, a structural component of a building, or other structure (other than tangible personal property (other than an air conditioning or heating unit)) and such property is not physically supported by, does not physically support, and is not physically connected to any property provided with the proceeds of obligations that qualify for the exception to the definition of the term "private activity bond" provided in section 103(n)(7)(C), or (ii) is tangible personal property (other than an air conditioning or heating unit). For this purpose, contiguous parcels of land will not be considered to support, to be supported by, or to be physically connected to each other, and insignificant physical connections (such as a connection by a sidewalk) will be disregarded. For purposes of this A–9, the term "tangible personal property" shall have the meaning given to it under section 48(a)(1)(A) and §1.48–1(c). Examples. The following examples illustrate the provisions of A–9 of this §1.103(n)–2T:

*Example 1.* On January 1, 1986, Governmental Unit M issues industrial development bonds to provide an airport, as described in section 103(b)(4)(D), which will consist of land, runways, a terminal and a functionally related and subordinate hotel. The hotel will be leased to N, a non-governmental entity. The lease does not call for significant front end loading of rental accruals or payments. For Federal income tax purposes generally, M will own the entire airport except that N will be the owner of the hotel solely by reason of the length of the lease. N properly elects not to claim depreciation of an investment credit with respect to the hotel. The industrial development bonds are not private activity bonds.

*Example 2.* The facts are the same as in Example (1) except that N does not make the election and claims depreciation with respect to the hotel. The entire issue of industrial development bonds is treated as an issue of private activity bonds.

*Example 3.* The facts are the same as in Example (2) except that the hotel is provided other than with the proceeds of an obligation described in section 103(a). The issue for the remainder of the airport qualifies for the exception to the definition of the term ''private activity bond'' provided in section 103(n)(7)(C).

*Example 4.* The facts are the same as in Example (2) except that the hotel, including the hotel parking lot, the hotel grounds, and the parcel of land on which they rest, are provided with a separate issue of industrial development bonds. There are no significant connections between the hotel and the airport. The issue for the hotel is an issue of private activity bonds. The issue for the remainder of the airport qualifies for the exception to the definition of the term ''private activity bonds'' provided in section 103(n)(7)(C).

*Example 5.* The facts are the same as Example (4) except that the hotel is constructed upon land provided with the proceeds of the issue used to provide the remainder of the airport. Both issues are treated as issues of private activity bonds.

*Example 6.* On June 30, 1983, construction began on the City NN airport, which consists of land, runways, a terminal, and hangars. Corporation XX (a non-governmental entity) owns for Federal income tax purposes generally several of the hangars, which it financed with obligations described in section 103(a) issued on June 30, 1983. On March 1, 1985, at a time when XX still owns the hangars, City NN issues an issue of obligations described in section 103(b)(4)(D) to enlarge the terminal at the City NN airport. City NN will own the addition to the terminal for Federal income tax purposes generally. The obligations comprising the March 1, 1985, issue will not be private activity bonds.

Q–10: What are the consequences if a governmental unit ceases to be treated as owning property described in section 103(b)(4) (C) or (D) where the property was provided by obligations that were not private activity bonds on the date of issue due to the exception provided in section 103(n)(7)(C)?

A–10: The obligations outstanding on the date such ownership ceases are private activity bonds and are treated as if they are the last private activity bonds issued by the issuer in the calendar year in which the transfer of ownership occurs. Thus, if the aggregate amount of bonds issued pursuant to such issue, when added to the aggregate amount of the other private activity bonds actually issued or treated as issued under this A–10 by the issuer during such year and the amount of any carryforward elections made during the year, exceeds the issuer's private activity bond limit for such year, the obligations are not described in section 103(a) as of the date on which transfer of ownership occurs; if such obligations do not comply with the requirements of section 103(n), the obligations will be treated as not described in section 103(a) as of the date such ownership ceases. However, if on the date of issue the issuer intended to transfer ownership of such property to a non-governmental entity during the term of the issue, then the obligations are treated as the last private activity bonds actually issued or treated as issued under this A–10 by the issuer during the year in which such obligations were actually issued; if such obligations do not comply with the requirements of section 103(n), the obligations will be treated as not described in section 103(a) as of the date of issue. The exception to the definition of the term ''private activity bond'' for facilities described in section 103(b)(4) (C) and (D) only applies if the property is owned by, or on behalf of, a governmental unit while all or any part of the issue or any refunding issue remains outstanding.

If all or a portion of the property is sold to a non-governmental entity for its fair market value and all of the proceeds from the sale (except for a de minimis amount less than $5,000) are used within six months to redeem outstanding obligations, the obligations will not be treated as private entity bonds.

Q–11: What are the consequences if private activity bonds are issued to provide additions to a facility that was provided with obligations that were not private activity bonds when issued by virtue of the exception provided in section 103(n)(7)(C) and such additions are not treated as owned by a governmental unit?

A–11: In order to qualify for the exception to the definition of the term ''private activity bond'' for obligations described in section 103(b)(4) (C) or (D), all of the property described in section 103(b)(4) (C) or (D) that is part of the facility provided with the proceeds generally must be owned by, or on behalf of, a governmental unit. See A–9 of this §1.103 (n)–2T. However, if the proceeds of an issue of private activity bonds are used to make additions to a facility (other than additions that are not considered to be part of the facility under A–9 of this §1.103(n)–2T) that was provided with another issue of industrial development bonds that were not private activity bonds when issued by virtue of the exception provided in section 103(n)(7)(C), then the prior issue will not cease to qualify for that exception. Nevertheless, for purposes of determining the aggregate amount of private activity bonds issued during the year that the issue to provide the addition to the previously financed facility is issued, the portion of the prior issue outstanding on the date of issue of the issue to provide the addition will be treated as part of the issue to provide the addition.

*Example.* The following example illustrates the provisions of A–11 of this §1.103 (n)–2T:

*Example.* On March 1, 1986, City P issues a $100 million issue of industrial development bonds to provide an airport, as described in section 103(b)(4)(D). City P uses substantially all of the proceeds to acquire land and to construct runways and a terminal on that land. No other property is constructed on the land. City P is the owner of the land and the terminal for Federal income tax purposes generally. Thus, the obligations comprising the March 1, 1986, issue are not private activity bonds when issued. On September 1, 1988, City P leases a portion of the land adjacent to the terminal to Corporation V (a non-governmental entity) under a true lease for Federal income tax purposes. City P's private activity bond limit for 1988 is $100 million, and as of September 30, 1988, City P has not issued any private activity bond during 1988. On September 30, 1988, City P issues a $20 million issue of industrial development bonds, the proceeds of which are to be used to construct a hotel that is functionally related and subordinate to the airport. The hotel is to be constructed on the land that P leased to Corporation V. The hotel will be owned by Corporation V for Federal income tax purposes generally. On September 30, 1988, the outstanding face amount of the March 1, 1986, issue is $100 million. Although the obligations comprising the March 1, 1986, issue will not become private activity bonds as a result of the subsequent issue, on September 30, 1988, City P is treated as issuing a $120 million issue of private activity bonds. Since that amount exceeds City P's private activity bond limit, the $20 million issue of private activity bonds issued on September 30, 1988, does not meet the requirements of section 103(n). In addition, any subsequent issuance of private activity bonds by City P during 1988 will fail to meet the requirements of section 103(n). The March 1, 1986, issue continues to be described in section 103(a).

Q–12: Section 103(n)(7)(C)(iv) provides that the exception for certain facilities described in section 103(b)(4) (C) or (D) shall not apply in any case where the facility is leased under a lease that has significant front end loading of rental accruals or payments. What does ''significant front end loading of rental accruals or payments'' mean?

A–12: Where a lease requires rental payments that are significantly higher in the early years of the lease than in later years, the lease calls for significant front end loading of rental accruals or payments. A lease that provides for flat rental payments during the entire lease term does not violate the prohibition against significant front end loading of rent. In addition, a lease may provide for adjustments in rent for inflation or deflation, provided that such adjustments are to be made on the basis of a generally recognized price index. In addition, a lease may provide that rental payments are to be determined, in whole or part, based on a percentage of income, production, etc., provided that the percentage rate is kept constant (or increases) over the term of the lease and that the threshold, if any, above which the percentage applies is kept constant (or decreases) over the term of the lease. Thus, for example, a lease that requires rental payments throughout the term of the lease of $100,000 per year plus 5 percent of the gross income from the facility in excess of $500,000 does not violate the prohibition against significant front end loading of rent.

*Examples.* The following examples illustrate the provisions of A–4 through A–12 of this § 1.103(n)–2T:

*Example 1.* On February 1, 1985, County Z issues obligations with a term of 30 years. Substantially all of the proceeds of the obligations are to be used to provide a trade show facility as described in section 103(b)(4)(C). Z leases the entire facility to Corporation S. For Federal income tax purposes generally, S is treated as the owner of the facility solely by reason of the length of the lease. The lease provides that the lessee will elect not to claim depreciation or an investment credit with respect to the facility and that S will provide Z with a copy of the election. S makes the election, retains it in its records, and provides County Z with a copy. The lease provides that neither the lessee nor any successor in interest will claim a deduction for depreciation or an investment credit with respect to such facility. The obligations are not private activity bonds on the date of issue, provided that the lease does not call for significant front end loading of rental accruals or payments.

*Example 2.* The facts are the same as in Example (1) except that on February 1, 1986, S assigns the lease to Corporation T. For its taxable year ending March 31, 1986, Corporation T claims depreciation with respect to the trade show facility. The obligations outstanding on the date Corporation T claims depreciation on its Federal income tax return are treated as the last private activity bonds actually issued or treated as issued by County Z during 1986, and such obligations must comply with the requirements of section 103(n). In addition, Corporation T is not entitled to claim depreciation or an investment credit with respect to the trade show facility during the balance of the term of the lease and will be subject to the applicable penalties for so claiming depreciation.

*Example 3.* The facts are the same as in Example (1) except that the obligations are redeemed on January 31, 1998; on January 31, 1999, S assigns the lease to Corporation X; and on its Federal income tax return for calendar year 1999, Corporation X claims depreciation with respect to the facility. The obligations are not private activity bonds provided that the lease does not call for significant front end loading of rental accruals or payments. However, X is not entitled to claim depreciation or an investment credit with respect to the trade show facility during the balance of the term of the lease and will be subject to the applicable penalties for so claiming those items.

Q–13: To which obligations does the refunding obligation exception apply?

A–13: The term ''private activity bond'' does not include any refunding obligation to the extent specified in this A–13. The term ''refunding obligation'' means an obligation that is part of an issue of obligations the proceeds of which are used to pay any principal or interest on any other issue of obligations described in section 103(a) (referred to as the prior issue). The term ''refunding obligation'' does not include any obligations issued more than 180 days before the prior issue is discharged (''advance refundings''). The exception for refunding obligations only applies to the extent that the aggregate amount of the refunding issue does not exceed the outstanding face amount of the prior issue, or portion thereof, being refunded. Thus, for example, in the case of an obligation part of the proceeds of which are to be used to refund a prior issue of private activity bonds and part of the proceeds of which are to be used to provide a pollution control facility under section 103(b)(4)(F), those proceeds to be used to refund all or any part of the principal amount of the prior issue are not the proceeds of a private activity bond; the balance of the proceeds are the proceeds of a private activity bond. The refunding obligation exception does not apply to obligations to the extent that amounts are used to pay the costs of issuing refunding obligations. If an issue of obligations consists of both obligations that qualify for the refunding obligation exception and private activity bonds that do not meet the requirements of section 103(n), the entire issue is treated as consisting of obligations not described in section 103(a).

Q–14: Does the refunding obligation exception apply to obligations issued to refund a prior issue of student loan bonds?

A–14: In the case of any student loan bond, the refunding obligation exception applies only if, in addition to the requirements stated in A–13 of this § 1.103(n)–2T, the maturity date of the funding obligation is not later than the later of (i) the maturity date of the obligation to be refunded, or (ii) the date 17 years after the date on which the refunded obligation was issued (or, in the case of a series of refundings, the date on which the original obligation was issued).

Q–15: What is the ''maturity date'' of an obligation?

A–15: For purposes of section 103(n), the ''maturity date'' of an obligation is the date on which interest ceases to accrue and the obligation may either be paid or redeemed without penalty. The date is determined without regard to optional redemption dates (including those at the option of holders). If the issuer is required by the obligations or the indenture to redeem portions of obligations or to make payments of principal with respect to obligations in specified amounts and at specified times, such mandatory redemptions or payments shall be treated as separate obligations.

Q–16: Where private activity bonds are refunded with other obligations described in section 103(a), does the refunding obligation exception apply to the extent that the aggregate amount of the refunding obligations exceeds the outstanding principal amount of the prior issue due to the use of a portion of the proceeds of the refunding issue to fund a reasonably required reserve or replacement fund?

A–16: Whether the prior issue was issued prior to January 1, 1984, or thereafter, the refunding obligation exception to the definition of the term ''private activity bond'' only applies to the extent that the aggregate amount of the refunding obligation does not exceed the outstanding principal amount of the prior issue. Thus, the additional obligations issued to provide for a reasonably required reserve or replacement fund are private activity bonds.

Q–17: What is a ''student loan bond''?

A–17: The term ''student loan bond'' means an obligation that is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly to finance loans to individuals for educational expenses. For purposes of this A–17, the use of more than 25 percent of the proceeds of an issue of obligations to finance loans to individuals for educational expenses will constitute the use of a major portion of such proceeds in such manner.

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C.103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39316, Oct. 5, 1984]

## § 1.103(n)–3T Private activity bond limit (temporary).

Q–1: What is the ''State ceiling''?

A–1: In general, the State ceiling applicable to each State and the District of Columbia for any calendar year prior to 1987 shall be the greater of $200 million or an amount equal to $150 multiplied by the State's (or the District of Columbia's) population. In the case of any territory or possession of the United States, the State ceiling for any calendar year prior to 1987 shall be an amount equal to $150 multiplied by the population of such territory or possession. In the case of calendar years after 1986, the two preceding sentences shall be applied by substituting ''$100'' for ''$150.'' In the case of any State that had an excess bond amount for 1983, the State ceiling for calendar year 1984 shall be the sum of the State ceiling determined under the general rule plus 50 percent of the excess bond amount for 1983. The excess bond amount for 1983 is the excess (if any) of (i) the aggregate amount of private activity bonds issued by issuing authorities in such State during the first 9 months of calendar year 1983 multiplied by 4/3, over (ii) the State ceiling determined under the general rule for 1984. For purposes of determining the State ceiling amount applicable to any any State for calendar year 1984, an issuer may rely upon the State ceiling amount published by the Treasury Department for such calendar year. However, an issuer may compute a different excess bond amount for 1983 where the issuer or the State in which the issuer is located has made a more accurate determination of the amount of private activity bonds issued by issuing authorities in the issuer's State during 1983. See A–7 of this §1.103(n)–3T for rules regarding a State containing constitutional home rule cities.

Q–2: What is the private activity bond limit for a State agency?

A–2: Under section 103(n)(2) the private activity bond limit for any agency of the State authorized to issue private activity bonds for any calendar year shall be 50 percent of the State ceiling for such year unless the State provides for a different allocation. For this purpose, the State is considered an agency. See, however, A–17 of this §1.103(n)–

3T with respect to the penalty for failure to comply with the requirements of section 631(a)(3) of the Tax Reform Act of 1984.

Q–3: How is private activity bond limit determined where a State has more than one agency?

A–3: If any State has more than one agency (including the State) authorized to issue private activity bonds, all such agencies shall be treated as a single agency for purposes of determining the aggregate private activity bond limit available for all such agencies. Each of the State agencies is treated as having jurisdiction over the entire State. Therefore, under A–8 of this §1.103(n)–3T the aggregate private activity bond limit for all the State agencies is allocated to the State since it possesses the broadest sovereign powers of any of the State agencies. Each other State agency's private activity bond limit is zero until it is assigned part of the private activity bond limit of another governmental unit pursuant to these regulations.

Q–4: What is a State agency?

A–4: A State agency is an agency authorized by a State to issue private activity bonds on behalf of the State. In addition, a special purpose governmental unit that derives its sovereign powers from the State and may exercise its sovereign powers throughout the State is a State agency. See A–5 of this §1.103(n)–3T for the definition of the term "special purpose governmental unit." The term "State agency" does not include issuing authorities empowered by a State at the request of another governmental unit within the State to issue private activity bonds to provide facilities within the jurisdiction of such other governmental unit. For example, if County O requests the legislature of State P to create an issuing authority empowered to issue obligations to provide pollution control facilities in County O, the authority is not a State agency.

*Examples.* The following examples illustrate the provisions of A–3 and A–4 of this §1.103(n)–3T:

*Example 1.* For 1987 State Q has a State ceiling of $200 million. Neither the Governor nor the legislature of State Q has provided a formula for allocating the State ceiling different from that provided by section 103(n) (2) and (3). State Q has authorized the following State agencies to issue private activity bonds on its behalf: Authority M, Authority N, and Authority O. The aggregate private activity bond limit available for State agencies of State Q is $100 million. As of January 1, 1987, none of this aggregate private activity bond limit has been assigned to any of Authorities M, N, or O. On January 1, 1987, Authority M issues $25 million of private activity bonds. During 1987, the duly authorized official designated by State Q to allocate the aggregate private activity bond limit among the three authorities does not allocate any of the State's private activity bond limit to Authority M. The January 1, 1987, issue does not meet the requirements of section 103(n) since Authority M has no private activity bond limit for 1987.

*Example 2.* Under the laws of State U, only the State legislature can create constituted authorities empowered to issue private activity bonds on behalf of governmental units within State U. Authority R was created by the State U legislature at the request of County X. Authority R is a constituted authority empowered to issue private activity bonds on behalf of County X to provide facilities located in County X. Authority S was created by the legislature to issue private activity bonds to provide pollution control facilities throughout the State. Authority S is a State agency as defined in A–4 of this §1.103(n)–3T. Authority R it is not a State agency.

Q–5: What is a governmental unit?

A–5: The term "governmental unit" has the meaning given such term by §1.103–1. For purposes of §§1.103(n)–1T through 1.103(n)–6T, a governmental unit is either a general purpose governmental unit or a special purpose governmental unit. The term "general purpose governmental unit" means a State, territory, possession of the United States, the District of Columbia, or any general purpose political subdivision thereof. The term "general purpose political subdivision" denotes any division of government that possesses the right to exercise police powers, the power to tax, and the power of eminent domain and that is governed, at least in part, by popularly elected officials (e.g., county, city, town, township, parish, village). The term "special purpose governmental unit" means any governmental unit as defined in §1.103–1 other than a general purpose governmental unit. For example, a sewer authority with the power of eminent domain but without police powers is a special purpose governmental unit.

A constituted authority empowered to issue private activity bonds on behalf of a governmental unit is not a governmental unit.

Q–6: What is the private activity bond limit for a general purpose governmental unit other than a State, the District of Columbia, a territory, or a possession?

A–6: The private activity bond limit for any such general purpose governmental unit for any calendar year is an amount equal to the general purpose governmental unit's proportionate share of 50 percent of the State ceiling amount for such calendar year. See A–10 of this §1.103(n)–3T with respect to the rules for providing a different allocation. The proportionate share of a general purpose governmental unit is an amount that bears the same ratio to 50 percent of the State ceiling for such year as the population of the jurisdiction of such general purpose governmental unit bears to the population of the entire State, District of Columbia, territory, or possession in which its jurisdiction falls. See, however, A–17 of this §1.103(n)–3T with respect to the penalty for failure to comply with the requirements of section 631(a)(3) of the Tax Reform Act of 1984. See A–9 of this §1.103(n)–3T with respect to the private activity bond limit of issuing authorities other than general purpose governmental units.

Q–7: What is the private activity bond limit for a general purpose governmental unit in a State with one or more constitutional homes rule cities?

A–7: The private activity bond limit for a constitutional home rule city for any calendar year is an amount equal to the constitutional home rule city's proportionate share of 100 percent of the State ceiling amount for the calendar year. The proportionate share of a constitutional home rule city is an amount that bears the same ratio to the State ceiling for such year as the population of the jurisdiction of such constitutional home rule city bears to the population of the entire State. The private activity bond limit for issuers other than constitutional home rule cities is computed in the manner described in A–2 through A–6 of this §1.103(n)–3T, except that in computing the private activity bond limit for issuers other than such constitutional home rule cities, the State ceiling amount for any calendar year shall be reduced by the aggregate private activity bond limit for all constitutional home rule cities in the State. The term ''constitutional home rule city'' means, with respect to any calendar year, any political subdivision of a State that, under a State constitution that was adopted in 1970 and effective on July 1, 1971, had home rule powers on the first day of the calendar year. See, however, A–17 of this §1.103(n)–3T with respect to the penalty for failure to comply with the requirements of section 631(a)(3) of the Tax Reform Act of 1984.

Q–8: How is the private activity bond limit of an issuing authority determined under section 103(n)(3) when there are overlapping jurisdictions?

A–8: If an area is within the jurisdiction of two or more governmental units, that area will be treated as only within the jurisdiction of the governmental unit having jurisdiction over the smallest geographical area. However, the governmental unit with jurisdiction over the smallest geographical area may enter into a written agreement to allocate all or a designated portion of such overlapping area to the governmental unit having jurisdiction over the next smallest geographical area. Where two or more issuing authorities, whether governmental units or constituted authorities, have authority to issue private activity bonds and both issuing authorities have jurisdiction over the identical geographical area, that area will be treated as only within the jurisdiction of the one having the broadest sovereign powers. However, the issuing authority having the broadest sovereign powers may enter into a written agreement to allocate all or a designated portion of such area to the one with the narrower sovereign powers. All written agreements entered into pursuant to this A–8 must be retained by the assignee in its records for the term of all private activity bonds it issues in each calendar year to which such agreement applies. See A–9 of this §1.103(n)–3T with respect to the private activity bond limit of issuing authorities other than general purpose governmental units.

Q–9: What is the private activity bond limit of an issuing authority (other than a State agency) that is not a general purpose governmental unit?

A–9: A constituted authority empowered to issue private activity bonds on behalf of a governmental unit is treated as having jurisdiction over the same geographical area as the governmental unit on behalf of which it is empowered to issue private activity bonds. Since a governmental unit has broader sovereign powers than a constituted authority empowered to issue private activity bonds on its behalf, a constituted authority has a private activity bond limit under section 103(n) (2) and (3) of zero. Similarly, a special purpose governmental unit is treated for purposes of section 103(n) as having jurisdiction over the same geographical area as that of the general purpose governmental unit or units from which the special purpose governmental unit derives its sovereign powers. Since a general purpose governmental unit has broader sovereign powers than a special purpose governmental unit, a special purpose governmental unit has a private activity bond limit under section 103(n) (2) and (3) of zero. An issuer of qualified scholarship funding bonds, as defined in section 103(e), is treated for purposes of section 103(n) as issuing on behalf of the State or politicial subdivision or subdivisions that requested its organization or its exercise of power to issue bonds. See A–13 and A–14 of this § 103(n)–3T with respect to assignments of private activity bond limit. For purposes of §§ 1.103(n)–1T through 1.103(n)–6T, a special purpose governmental unit shall be considered to derive its authority from the smallest general purpose governmental unit that—

(i) Enacts a specific law (e.g., a provision of a State constitution, charter, or statute) by or under which the special purpose governmental unit is created, or

(ii) Otherwise empowers, approves, or requests the creation of the special purpose governmental unit, or

(iii) Appoints members to the governing body of the special purpose governmental unit,

and within which general purpose governmental unit falls the entire area in which such special purpose governmental unit may exercise its sovereign powers. If no one general purpose governmental unit meets such criteria (e.g., a regional special purpose governmental unit that exercises its sovereign powers within three counties pursuant to a separate ordinance adopted by each such county), such special purpose governmental unit shall be considered to derive its sovereign powers from each of the general purpose governmental units comprising the combination of smallest general purpose governmental units within which falls the entire area in which such special purpose governmental unit may exercise its sovereign powers and each of which meets (i), (ii), or (iii) above.

Q–10: Does the issue comply with the requirements of section 103 (n) under the following circumstances? Based on the most recent estimate of the resident population of State Y published by the Bureau of the Census before the beginning of 1988, the State ceiling for State Y is $200 million. Based on the same estimate, the population of City Q is one-fourth of the population of State Y. No part of the geographical area within the jurisidiction of City Q is within the jurisdiction of any other governmental unit with jurisdiction over a smaller geographical area. There are no consitutional home rule cities in State Y. Neither the Governor nor the legislature of State Y has provided a different formula for allocating the State ceiling than that provided by section 103(n) (2) and (3); thus, City Q's private activity bond limit for 1988 is $25 million ($.25 \times .50 \times$ $200 million). As of March 1, 1988, City Q has issued $15 million of private activity bonds during calendar year 1988, none of which were issued pursuant to a carryforward election made in a prior year. On March 1, 1988, City Q will issue $5 million of private activity bonds to provide a pollution control facility as described in section 103(b)(4) (F). C, a duly authorized official of City Q responsible for issuing the bonds, provides a statement that will be included in the bond indenture or a related document providing that—

(i) Under section 103(n) (2) and (3) of the Internal Revenue Code, City Q has a private activity bond limit of $25 million for calendar year 1988 (.25 × .50 × $200 million), none of which has been assigned to it by another governmental unit,

(ii) State Y has not provided a different method of allocating the State ceiling,

(iii) City Q has not assigned any portion of its private activity bond limit to a constituted authority empowered to issue private activity bonds on its behalf, or to any other governmental unit,

(iv) City Q has not elected to carry forward any of its private activity bond limit for 1988 to another calendar year, nor has City Q in any prior year made a carryforward election for the pollution control facility,

(v) The aggregate amount of private activity bonds issued by City Q during 1988 is $15 million, and

(vi) The issuance of $5 million of private activity bonds on March 1, 1988, will not violate the requirements of section 103 (n) and the regulations thereunder.

In addition, C provides the certification described in section 103 (n) (12) (A).

A–10: Based on these facts, the issue meets the requirements of section 103(n) and §§1.103(n)–1T through 1.103(n)–6T. See §1.103–13(b)(8) for the definition of the terms ''bond indenture'' and''related documents.''

Q–11: May a State provide a different formula for allocating the state ceiling?

A–11: A State, by law enacted at any time, may provide a different formula for allocating the State ceiling among the governmental units in the State (other than constitutional home rule cities) having authority to issue private activity bonds, subject to the limitation provided in A–12 of this §1.103(n)–3T. The governor of a State may proclaim a different formula for allocating the State ceiling among the governmental units in such State having authority to issue private activity bonds. The authority of the governor to proclaim a different formula shall not apply after the earlier of (i) the first day of the first calendar year beginning after the legislature of the State has met in regular session for more than 60 days after July 18, 1984, and (ii) the effective date of any State legislation dealing with the allocation of the State ceiling. If, on or before either date, the governor of any State exercises the authority to provide a different allocation, such allocation shall be effective until the date specified in (ii) of the immediately preceding sentence. Unless otherwise provided in a State constitutional amendment or by a law changing the home rule provisions adopted in the manner provided by the State constitution, the allocation of that portion of the State ceiling that is allocated to any constitutional home rule city may not be changed by the governor or State legislature unless such city agrees to such different allocation.

Q–12: Where a State provides an allocation formula different from that provided in section 103 (n) (2) and (3), which allocation formula applies to obligations issued prior to the adoption of the different allocation formula?

A–12: Where a State provides a different allocation formula, the determination as to whether a particular bond issue meets the requirements of section 103(n) will be based upon the allocation formula in effect at the time such bonds were issued. The amount that may be reallocated pursuant to the later allocation formula is limited to the State ceiling for such year reduced by the amount of private activity bonds issued under the prior allocation formula in effect for such year.

Q–13: May an issuing authority assign a portion of its private activity bond limit to another issuing authority if the governor or legislature has not provided for an allocation formula different from that provided in section 103(n) (2) and (3)?

A–13: Except as provided in this A–13 or in A–8, A–14, or A–15 of this §1.103(n)–3T, no issuing authority may assign, directly or indirectly, all or any portion of its private activity bond limit to any other issuing authority, and no such attempted assignment will be effective. However, a general purpose governmental unit may assign a portion of its private activity bond limit to (i) a constituted authority empowered to issue private activity bonds on behalf of the assigning governmental unit, and (ii) a special purpose governmental unit deriving sovereign powers from the governmental unit making the assignment. In addition, a State may assign a portion of its private activity bond limit to a constituted authority empowered to issue private activity bonds on behalf of any governmental unit within such State and to any governmental unit within such State. Finally, an issuing authority that is assigned all or a portion of the private activity bond limit of a governmental unit pursuant to the immediately preceding two sentences may assign such amount or any part thereof to the governmental unit from which it received the assignment. None of these permissible types of assignments shall be effective, however, unless made in writing by a duly authorized official of the governmental unit making the assignment and a record of the assignment is maintained by the assignee for the term of all private activity bonds it issues in each calendar year to which such assignment applies. None of these permissible types of assignments shall be effective if made retroactively; provided, however, that retroactive assignments may be made during 1984. In addition, except as provided in A–15 of this §1.103(n)–3T, a purported assignment by a governmental unit of a portion of its private activity bond limit to an issuing authority will be ineffective to the extent that private activity bonds issued by such authority provide facilities not located within the jurisdiction of the governmental unit making the assignment, unless the sole beneficiary of the facility is the governmental unit attempting to make the assignment. Similarly, except as provided in A–15 of this §1.103(n)–3T, a governmental unit may not allocate a portion of its private activity bond limit to an issue of obligations to provide a facility not located within the jurisdiction of that governmental unit unless the sole beneficiary of the facility is the governmental unit attempting to allocate its private activity bond limit to the issue. If an issuing authority issues an issue of obligations a portion of the proceeds of which are to be used to provide a facility not within its jurisdiction other than one described in the immediately preceding sentence, that issue will not meet the requirements of section 103(n) unless an issuing authority within the jurisdiction of which the facility is to be located specifically allocates a portion of its private activity bond limit to such issue equal to the amount of proceeds to be used to provide such facility.

Q–14: May an issuing authority assign a portion of its private activity bond limit to another issuing authority if the governor or legislature has provided for an allocation formula different from that provided in section 103(n) (2) and (3)?

A–14: Yes, under certain conditions. In providing a different formula for allocating the State ceiling, a State may permit an issuing authority to assign all or a portion of its private activity bond limit to other issuing authorities within the State, provided that such assignment is made in writing and a record of that assignment is maintained by the assignee in its records for the term of all private activity bonds it issues in each calendar year to which such assignment applies and a record of that assignment is maintained during such period by the public official responsible for making allocations of the State ceiling to issuing authorities within the State. The preceding sentence will only apply where the different formula expressly permits such assignments. Notwithstanding this A–14, no assignments may be made to regional authorities without compliance with the provisions of A–15 of this §1.103(n)–3T.

Q–15: May a general purpose governmental unit assign a portion of its private activity bond limit to a regional authority empowered to issue private activity bonds on behalf of two or more general purpose governmental units?

A–15: Yes, under certain conditions. In order for an issue of private activity bonds issued by such a regional authority to meet the requirements of section 103(n), each of the governmental units on behalf of which the regional authority issues private activity bonds must assign to the regional authority a portion of its private activity bond limit based on the ratio of its population to the aggregate population of all such governmental units. The governmental unit within the jurisdiction of which the facility to be provided by the private activity bonds will be located, however, may elect to treat the regional authority as if it were a constituted authority empowered to issue such obligations solely on behalf of that governmental unit and, therefore, may assign a portion of its limit to the authority solely to provide the facility within its jurisdiction. Similarly, if a facility will solely benefit one governmental unit, that governmental unit may make the election described in the preceding sentence. In addition, any of the governmental units on behalf of which the regional authority issues private activity bonds, other than the governmental unit within the jurisdiction of which the facility will be located, may elect to be treated as if it had not empowered the authority to issue that issue of private activity bonds on its behalf. In providing a different formula for allocating the State ceiling, a State may permit a governmental unit to assign all or a portion of its private activity bond limit to a constituted authority empowered to issue private activity bonds on behalf of two or more governmental units, all of which are located within the State. The preceding sentence will only apply where the different formula expressly so provides. The principles of this A–15 shall not apply to any regional authority created with a principal purpose of avoiding the restrictions provided in A–13 or A–14 of this §1.103(n)–3T. The principles of this A–15 shall also apply to a special purpose governmental unit providing facilities located within the jurisdiction of two or more general purpose governmental units from which it derives sovereign powers.

*Examples.* The following examples illustrate the provisions of A–8 through A–15 of this section:

*Example 1.* Authority ZZ is empowered by City Y to issue obligations on its behalf to provide financing for pollution control facilities located within the jurisdiction of City Y and the geographical area within 10 miles of the limits of City Y. Authority ZZ has no sovereign powers. Although the authority of Authority ZZ to issue obligations enables it to provide facilities located outside of the jurisdiction of City Y, Authority ZZ is treated as having jurisdiction over the same geographical area as City Y. Since City Y has broader sovereign powers than Authority ZZ, under section 103(n)(3) Authority ZZ has a private activity bond limit of zero. On March 31, 1985, Authority ZZ issues $5 million of private activity bonds. City Y has not assigned any portion of its private activity bond limit to Authority ZZ. Thus, the March 31, 1985, issue of private activity bonds is treated as an issue of obligations not described in section 103(a), and the interest on such obligations is subject to Federal income taxation.

*Example 2.* In 1972, State S, State T, and State V empowered Authority Z to issue industrial development bonds on behalf of the three States and to provide port facilities in a harbor serving residents of all three States. S, T, and V have populations of 1,000,000, 2,000,000, and 7,000,000, respectively. Authority Z will issue $100 million of private activity bonds on September 1, 1985, to finance construction of a dock to be located in State S. The obligations will not meet the requirements of section 103(n) unless S, T, and V assign a portion of their private activity bond limits to Authority Z pursuant to one of three methods. First, S, T, and V may assign $10 million, $20 million, and $70 million, respectively, of their private activity bond limits to Authority Z for this issue. Second, S, T, and V may assign $100 million, $0, and $0, respectively, of their private activity bond limits to Authority Z for this issue. Third, either T or V (but not S) may allocate $0 of its private activity bond limit to Authority Z for purposes of this issue, and the remaining two States may allocate the $100 million based upon their respective populations. For instance, if T were to allocate $0 for purposes of this issue, S and V must allocate $12.5 million and $87.5 million, respectively, of their private activity bond limits to Authority Z.

Q–16: Must an issuing authority allocate any of its private activity bond limit to certain preliminarily approved projects?

A–16: Yes. Section 631(a)(3) of the Tax Reform Act of 1984 provides that, with respect to certain projects preliminarily approved by an issuing authority before October 19, 1983, the issuing authority shall allocate its share of the private activity bond limit for the calendar year during which the obligations are to be issued first to those projects. For purposes of this A–16 and A–17 and A–18 of this §1.103(n)–3T, a general purpose governmental unit will be treated as having preliminarily approved a project if the project was preliminarily approved by it, by a constituted authority empowered to issue private activity bonds on its behalf, or by a special purpose governmental unit treated as having jurisdiction over the same geographical area as the general purpose governmental unit. Thus, if a project was approved by a constituted authority, the governmental unit on behalf of which such issue is to be issued must assign a portion of its private activity bond limit to the authority pursuant to section 631(a)(3) of the Act. If a project was preliminarily approved by a constituted authority empowered to issue private activity bonds on behalf or more than one general purpose governmental unit or a special purpose governmental unit that derives its sovereign powers from more than one general purpose governmental unit, the project will be considered approved by each of such general purpose governmental units in proportion to their relative populations. The projects that receive priority under section 631(a)(3) of the Act and this A–16 are those with respect to which—

(i) There was an inducement resolution (or other comparable preliminary approval) for a project before October 19, 1983, by an issuing authority,

(ii) A substantial user of the project notified such issuing authority—

(A) By August 17, 1984, that it intended to claim its rights under section 631(a)(3) of the Tax Reform Act of 1984, and

(B) By December 31, 1984, as to the calendar year in which it expects the obligations to provide the project to be issued, and

(iii) Construction of such project began before October 19, 1983, or a substantial user was under a binding obligation on that date to incur significant expenditures with respect to the project.

For purposes of the preceding sentence, the term ''significant expenditures'' means expenditures that equal or exceed the lesser of $15 million or 20 percent of the estimated cost of the facilities. An issuing authority may require, as part of the submission required by (ii)(B) of this A–16, that a substantial user specify the aggregate amount of private activity bonds necessary for the project. Section 631(a)(3) does not apply to a project to the extent that the aggregate amount of obligations required for such project exceeds the amount, if any, provided for in the inducement resolution or resolutions in existence with respect to such project before October 19, 1983, or in the statement that may be required by the issuing authority as part of the submission required by (ii)(B) of this A–16. Similarly, section 631(a)(3) does not apply to a project to the extent of any material change in its nature, character, purpose, or capacity. Section 631(a)(3) does not apply to a project if the owner, operator, or manager of such project is not the same (or a related person) as the owner, operator, or manager named in the latest inducement resolution with respect to such project in existence before October 19, 1983. Section 631(a)(3) of the Act does not apply to any project if the obligations to provide the project are not issued in the year specified in the submission required by (ii)(B) of this A–16. In addition, section 631(a)(3) of the Act does not apply to any project to the extent that the amount of obligations to be issued for such project exceeds the share of the State ceiling to which the issuing authority that authorized the project is entitled as determined under section 103(n) (2) and (3) without regard to any alternative formula for allocating the State ceiling. The requirements of section 631(a)(3) will not apply where a State statute specifically so provides.

Q–17: What is the penalty for failure to comply with the requirements of section 631(a)(3) of the Act?

A–17: If any issuing authority fails to comply with the requirements of section 631(a)(3) of the Act, its private activity bond limit for the calendar year following the year in which the failure occurs shall be reduced by the amount of private activity bonds with respect to which the failure occurs. This penalty applies whether the issuing authority's private activity bond limit is determined under the formula provided under section 103(n) (2) and (3) or a different formula provided under section 103(n)(6). The penalty is imposed on the issuing authority that failed to comply with the requirements of section 631(a)(3) or, if in the year in which the penalty is imposed the issuing authority does not have a sufficient private activity bond limit to absorb the entire penalty, on the general purpose governmental unit treated as having jurisdiction over the same geographical area as the issuing authority. For purposes of this A–17, the general purpose governmental unit's private activity bond limit includes the private activity bond limit of each issuing authority treated as having preliminarily approved the project under A–16 of this §1.103(n)–3T. Thus, for example, if a governmental unit failed to comply with the requirements of section 631(a)(3) of the Act with respect to a $5 million issue to be issued in 1985, and that governmental unit is assigned $15 million of the State ceiling for 1986 pursuant to a formula provided under section 103(n)(6), that governmental unit has a private activity bond limit of $10 million for 1986. Similarly, where a project that was preliminarily approved by an issuing authority that is not a governmental unit qualifies for $10 million of priority under section 631(a)(3) of the Act is not allocated a total of $10 million by the governmental unit on behalf of which the issuing authority is empowered to issue private activity bonds, the issuing authority's private activity bond limit, if any, for the year following this failure is reduced by $10 million; if the issuing authority's private activity bond limit for the year following the failure is less than $10 million, the private activity bond limit of the governmental unit on behalf of which the private activity bonds would have been issued had the failure not occurred (including if necessary, on a proportionate basis, the private activity bond limit purported to have been assigned to each of the other constituted authorities empowered to issue private activity bonds on behalf of the governmental unit and each special purpose governmental unit deriving all or part of its sovereign powers from the governmental unit) is reduced by the difference between $10 million and the reduction made in the issuing authority's private activity bond limit with respect to such failure.

Q–18: Will a penalty be assessed for failure to allocate private activity bond limit to all projects that meet the requirements section 631(a)(3) if the amount of obligations required by all such projects preliminarily approved by (or treated as having been preliminarily approved by) an issuing authority exceeds the private activity bond limit of such issuing authority?

A–18: No penalty will be assessed if priority is given to those eligible projects for which substantial expenditures were incurred before October 19, 1983. An issuer may define the term ''substantial expenditures'' in any reasonable manner based on the relevant facts and circumstances and its private activity bond limit.

*Examples.* The following examples illustrate the provisions of A–16 through A–18:

*Example 1.* On October 1, 1983, County S approved an inducement resolution for the issuance of up to $30 million of industrial development bonds to provide a pollution control facility described in section 103(b)(4)(F) for Corporation R. On October 5, 1983, R contracted with Corporation Q to begin construction of the pollution control facility immediately, and construction began on October 10, 1983. Not later than August 17, 1984, Corporation R notified County S that it intended to seek priority under section 631(a)(3) of the Tax Reform Act of 1984. In addition, prior to December 31, 1984, Corporation R notified County S that it expected the County to issue $25 million of industrial development bonds for its project during calendar year 1985. Under section 103(n)(3), County S has a private activity bond limit of $50 million for calendar year 1985, and neither the Governor nor the legislature of the State has provided a different allocation formula under section 103(n)(6). There are no other projects approved by County S that have rights under section 631(a)(3). On March 1, 1985, County S issues $25 million of industrial development bonds for the pollution control facility for Corporation R. If County S allocates less than $25 million of its private activity bond limit to that project, its private activity bond limit for 1986 will be reduced by the difference between $25 million and the amount County S actually allocates to the project.

*Example 2.* The facts are the same as in Example (1) except that during 1984 Corporation R fails to notify County S of the year in which it expects the obligations to be issued. Upon such failure the pollution control facility no longer qualifies for priority under section 631(a)(3), and County S will not be penalized if it does not not allocate any of its private activity bond limit for 1985, or any future year, to that project.

*Example 3.* The facts are the same as in Example (1) except that under section 103(n)(3) County S has a private activity bond limit of $10 million for 1985. County S will not be penalized if it allocates $10 million of its private activity bond limit to the project.

*Example 4.* The facts are the same as in Example (3) except that on December 31, 1984, the Governor of the State provides a different allocation from that provided under section 103(n) (2) and (3). (The State has not enacted a statute specifically providing that section 631(a)(3) does not apply.) The different allocation provides that the entire State ceiling is allocated to the State and that the State will allocate the State ceiling to issuing authorities for specific projects on a first-come, first-served basis. Corporation R qualifies for the special rights granted by section 631(a)(3) of the Tax Reform Act to the extent of County S's private activity bond limit as determined under section 103(n)(3), *i.e.*, $10 million. If the State fails to assign to County S $10 million of the State ceiling or if County S, after receiving such assignment, fails to allocate $10 million of private activity bond limit to the project, County S's private activity bond limit (if any) for 1986 will be reduced by the difference between $10 million and the amount of private activity bond limit allocated to the project.

*Example 5.* The facts are the same as in Example (1) except that Corporation R notifies County S that it only requires $15 million for the pollution control facility, County S only issues $15 million of private activity bonds for the pollution control facility, and County S only allocates $15 million of its private activity bond limit to such obligations. County S will not be penalized for not allocating more than $15 million of its private activity bond limit to Corporation R even though the original inducement resolution provided for up to $25 million.

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C.103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39320, Oct. 5, 1984]

### § 1.103(n)–4T Elective carryforward of unused private activity bond limit (temporary).

Q–1: May an issuing authority carry forward any of its unused private activity bond limit for a calendar year?

A–1: In any calendar year after 1983 in which an issuing authority's private activity bond limit exceeds the aggregate amount of private activity bonds issued during such calendar year by such issuing authority, such issuing authority may elect to treat all, or any portion, of such excess as a carryforward for any one or more projects described in A–5 of this § 1.103(n)–4T (carryforward projects).

Q–2: How is the election to carry forward an issuing authority's unused private activity bond limit made?

A–2: (i) An issuing authority may make the election by means of a statement, signed by an authorized public official responsible for making allocations of such issuing authority's private activity bond limit, that the issuing authority elects to carry forward its unused private activity bond limit. The statement shall be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. Except with respect to elections to carry forward any unused private activity bond limit for calendar year 1984, the election must be filed prior to the end of the calendar year with respect to which the issuing authority has the unused private activity bond limit; elections with respect to unused private activity bond limit for calendar year 1984 must be filed prior to February 26, 1985. The statement is to be titled ''Carryforward election under section 103(n)''.

(ii) The statement required by (i) of this A–2 shall contain the following information:

(A) The name, address, and TIN of the issuing authority,

(B) The issuing authority's private activity bond limit for the calendar year,

(C) The aggregate amount of private activity bonds issued by the issuing authority during the calendar year for which the election is being made,

(D) The unused private activity bond limit of the issuing authority, and

(E) For each carryforward project—

(*1*) A description of the project, including its address (by its street address or, if none, by a general description designed to indicate its specific location) and the general type of facility (e.g., an airport described in section 103(b)(4)(D)),

(*2*) The name, address, and TIN of the initial owner, operator, or manager, and

(*3*) The amount to be carried forward for the project.

(iii) For purposes of (ii)(E) of this A–2, in the case of a carryforward project for which the initial owner, operator, or manager is to be selected pursuant to a competitive bidding process, the election may include up to 3 prospective addresses for the project and the name, address, and TIN of more than one prospective initial owner, operator, or manager, if prior to the end of the calendar year for which the election is made—

(A) In the case of elections for calendar years other than 1984, the issuing authority has taken preliminary official action approving the undertaking of the carryforward project,

(B) All persons included as prospective owners, operators, or managers have met all applicable conditions (if any) to submit proposals to provide the project, and

(C) The issuing authority has expended (or has entered into binding contracts to expend) in connection with the planning and construction of the carryforward project the lesser of $500,000 or 2½ percent of the carryforward amount.

(iv) For purposes of (ii) of this A–2, in the case of a carryforward election for the purpose of issuing student loan bonds, the statement need not include the address of a facility or the name, address, and TIN of an initial owner, operator, or manager of a project but shall state that the carryforward election is for the purpose of issuing student loan bonds.

Q–3: Is a carryforward election revocable?

A–3: Any carryforward election, and any specification contained therein, shall be irrevocable after the last day of the calendar year in which the election is made. Thus, for example, obligations issued to finance a carryforward project with a different initial owner, operator, or manager from the owner, operator, or manager specified in the carryforward election shall not be issued purusant to such carryforward election. An insubstantial deviation from a specification contained in a carryforward election shall not prevent obligations from being issued pursuant to such carryforward election. In addition, where a carryforward election is made with respect to more than one carryforward project, a substantial deviation with respect to one carryforward project shall not prevent obligations from being issued pursuant to such carryforward election with respect to the other carryforward projects.

Q–4: How is a carryforward used?

A–4: Any private activity bonds issued during the three calendar years (six calendar years in the case of a project described in section 103(b)(4)(F)) following the calendard year in which the carryforward election was first made with respect to a carryforward project shall not be taken into account in determining whether the issue meets the requirements of section 103(n). If, however, the amount of private activity bonds issued for the carryforward project exceeds the amount of the carryforward elected with respect to the project, then the portion of the issue that exceeds the carryforward shall be taken into account in determining whether the issue meets with the requirements of section 103(n); if that portion of the issue does not meet the requirements of section 103(n) then the entire issue is treated as consisting of obligations not described in section 103(a). Carryforwards elected with respect to any project shall be used in the order of the calendar years in which they arose. Thus, for example, if an issuing authority makes carryforward elections in 1986 and 1988 for a carryforward project and issues private activity bonds for that project in 1989 and 1990, the obligations issued in 1989 will be applied to the 1986 carryforward election to the extent thereof.

Q–5: For what projects may a carryforward election be made?

A–5: A carryforward election may be made for any project described in section 103(b) (4) or (5), and for the purpose of issuing student loan bonds. Thus, for example, an issuing authority may elect to carry forward its unused private activity bond limit in order to provide a sports facility described in section 103(b)(4)(B). In addition, a governmental unit may elect to carry forward its unused private activity bond limit in order to issue qualified scholarship funding bonds. An issuing authority may not, however, elect to carry forward its unused private activity bond limit in order to issue an exempt small issue of industrial development bonds under section 103(b)(6).

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C.103(n); 68A Stat. 917, 26 U.S.C. 7805); sec. 644(b) of the Tax Reform Act of 1984 (98 Stat. 940); secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 915, 26 U.S.C. 103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39325, Oct. 5, 1984, as amended by T.D. 8001, 49 FR 50389, Dec. 28, 1984]

### § 1.103(n)–5T Certification of no consideration for allocation (temporary).

Q–1: Who must certify that there was no consideration for an allocation?

A–1: Section 103(n)(12)(A) provides that, with respect to any private activity bond allocated any portion of the State ceiling, the private activity bond will not be described under section 103(a) unless the public official, if any, responsible for such allocation (''responsible public official'') certifies under penalties of perjury that to the best of his knowledge the allocation of the State ceiling to that private activity bond was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign. With respect to any issue of private activity bonds, the responsible public official is the official or officer of the issuing authority that in fact is responsible for choosing which individual projects will be allocated a portion of the State ceiling. If a body of several individuals is responsible for such choices, any one member of such body qualifies as the responsible public official.

Q–2: What is the penalty for willfully making an allocation in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign?

A–2: Section 103(n)(12)(B) provides that any person willfully making an allocation of any portion of the State ceiling in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign will be subject to criminal penalty as though the allocation were a willful attempt to evade tax imposed by the Internal Revenue Code.

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C.103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39326, Oct. 5, 1984]

### § 1.103(n)–6T Determinations of population (temporary).

Q–1: What is the proper method for determining population?

A–1: All determinations of population must be made with respect to any calendar year on the basis of the most recent census estimate (whether final or provisional) of the resident population of the State or other governmental unit published by the Bureau of the Census in the ''Current Population Reports'' series before the beginning of the calendar year.

However, determinations of the population of a general purpose governmental unit (other than a State, territory, or possession) within a State, territory, or possession may not be based on estimates that do not contain estimates for all of the general purpose governmental units within such State, territory, or possession. Thus, a county may not determine its population on the basis of a census estimate that does not provide an estimate of the population of the other general purpose governmental units within the State (e.g., cities, towns). If no census estimate is available for all such general purpose governmental units, the most recent decennial census of population may be relied on.

*Example:* The following example illustrates the provisions of A–1 of this § 1.103(n)–6T:

*Example.* County Q is located within State R. There are no constitutional home rule cities in State R. State R has not adopted a formula for allocating the State ceiling different from the formula provided in section 103(n) (2) and (3). The geographical area within the jurisdiction of County Q is not within the jurisdiction of any other governmental unit having jurisdiction over a smaller geographical area. As of December 31, 1984, the Bureau of the Census has published the following estimates of resident population: ''Current Population Reports; Series P–25: Population Estimates and Projections, Estimates of the Population of States: July 1, 1981–1983'' and ''Current Population Reports; Series P–26: Local Population Estimates:

Population of State R, Counties, Incorporated Places, and Minor Civil Divisions: July 1, 1981–1982.'' The most recent population estimate for State R available prior to 1985 provides population estimates as of July 1, 1983. The most recent population extimates for County Q available prior to 1985 is the estimate for July 1, 1982. Assuming that the State ceiling for State R for 1985 is in excess of $200 million (*i.e.*, $150 multiplied by the estimated population of State R as of July 1, 1983, exceeds $200 million), County Q may determine its private activity bond limit by using the following formula:

$P = \$150 \times .5 \times W \times Y / Z$, where,

P = County Q's private activity bond limit,
W = the July 1, 1983, population estimate for State R,
Y = the July 1, 1982, population estimate for County Q, and
Z = the July 1, 1982, population estimate for State R.

If the State ceiling for State R is not in excess of $200 million, County Q may determine its private activity bond limit by using the following formula:

$P = \$200{,}000{,}000 \times .5 \times Y / Z$, where

P, Y, and Z have the same meaning as above.

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C.103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39326, Oct. 5, 1984]

### § 1.103(n)–7T Election to allocate State ceiling to certain facilities for local furnishing of electricity (temporary).

(a) *Election*—(1) *In general*. The issuing authorities of the State of New York (''New York'') may elect to use in 1984 up to one-half of the amount that would have been New York's State ceiling (as defined in section 103(n)(4) and A–1 of §1.103(n)–3T) for calendar years 1985, 1986, and 1987 for the purpose of issuing obligations to provide facilities for the local furnishing of electric energy described in section 644(a) of the Tax Reform Act of 1984 (the ''Act''). For purposes of this paragraph, New York's State ceiling for calendar years 1985, 1986, and 1987 is considered equal to the State ceiling for 1984 (without taking into account any increase in the State ceiling for 1984 as a result of an election under section 644(b) and this section).

(2) *Procedure*. The election shall be made by filing the statement described in this paragraph (a)(2) with the Internal Revenue Service Center, Philadelphia, Pennsylvania, on or before December 31, 1984. The statement shall be titled ''Allocation election under section 644 of the Tax Reform Act of 1984,'' shall be signed by the Governor of New York or his authorized representative, and shall contain the following information:

(i) The name, address, and TIN of the issuing authority (or authorities) that is expected to issue the obligations for the facilities described in section 644(a) of the Act pursuant to the election described in section 644(b) of the Act and this section, and

(ii) The amount of the State ceiling for each of calendar years 1985, 1986, and 1987 with respect to which the election is made.

(b) *Effect of election*—(1) *In 1984*. The amount of the State ceiling for calendar years 1985, 1986, and 1987 with respect to which the election is made will be considered part of New York's State ceiling for calendar year 1984. For purposes of section 644(b) of the Act, such amount will be considered used in 1984 only to the extent that obligations are issued in 1984 to provide facilities for the local furnishing of electric energy described in section 644(a) of the Act, or to the extent that a proper election is made on or before December 31, 1984 (and is not revoked or amended between the time it is made and the end of 1984) pursuant to section 103(n)(10) and §1.103(n)–4T to carry forward all or part of such amount to provide such facilities during the carryforward period applicable to calendar year 1984 State ceiling.

(2) *In 1985, 1986, and 1987*. An election under section 644(b) of the Act and this section to use in calendar year 1984 an amount of New York's State ceiling for a subsequent calendar year reduces the State ceiling for such subsequent calendar year by the amount with respect to which the election is made, whether or not such amount is considered used in 1984 pursuant to this paragraph (b). Thus, no obligations may be issued pursuant to the election described in section 644(b) of the Act and this section to provide a facility other than the facilities for the furnishing of electric energy described in section 644(a) of the Act.

(3) *Other effects.* An election or the failure to make an election under section 644(b) of the Act and this section shall not affect any otherwise applicable rule that permits an issuing authority, for any calendar year, to—

(i) Allocate a portion of its private activity bond limit,

(ii) Issue obligations within its private activity bond limit, or

(iii) Elect under section 103(n)(10) and § 1.103(n)–4T to carry forward any portion of its private activity bond limit,

in order to issue obligations to provide a facility described in section 644(a) of the Act.

(c) *Revocation of election.* An election made under section 644(b) of the Act and this section may not be revoked or amended. An insubstantial deviation from a specification contained in an election under section 644(b) of the Act and this section shall not prevent obligations from being issued pursuant to such election.

(Sec. 644(b) of the Tax Reform Act of 1984 (98 Stat. 940); secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 915, 26 U.S.C. 103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 8001, 49 FR 50389, Dec. 28, 1984]

### § 1.103A–2 Qualified mortgage bond.

(a)–(j) [Reserved]

(k) *Information reporting requirement*—(1) *In general.* An issue meets the requirements of this paragraph only if the issuer in good faith attempted to meet the information reporting requirements of this paragraph. Except as otherwise provided in paragraph (k)(5)(iv) of this section, the requirements of this paragraph apply to qualified veterans' mortgage bonds issued after July 18, 1984, and to qualified mortgage bonds issued after December 31, 1984. With respect to bonds issued after December 31, 1986, see the regulations under section 149(e).

(2) *Information required.* (i) The issuer must, based on information and reasonable expectations determined as of the date of issue, submit on Form 8038 the information required therein; the issuer need not however, include the information required by Form 8038 that is relevant only to obligations described in section 103(l)(1) and the regulations thereunder. The information that must be submitted includes—

(A) The name, address, and employer identification number of the issuer,

(B) The date of issue,

(C) The face amount of each obligation which is part of the issue,

(D) The total purchase price of the issue,

(E) The amount allocated to a reasonably required reserve or replacement fund,

(F) The amount of lendable proceeds,

(G) The stated interest rate of each maturity,

(H) The term of each maturity,

(I) In the case of an issue of qualified mortgage bonds, whether the issuer has elected under § 6a.103A–2(i)(4)(v) to pay arbitrage to the United States,

(J) In the case of an issue of qualified mortgage bonds, the issuer's market limitation as of the date of issue (as defined in § 6a.103A–2(g)), the amount of qualified mortgage bonds that the issuer has elected not to issue under section 25(c)(2) and the regulations thereunder, and the aggregate amount of qualified mortgage bonds issued to date by the issuer during the calendar year, and

(K) In the case of an issue of qualified veterans' mortgage bonds, the issuer's State veterans limit (as defined in section 103A(o)(3)(B) and the regulations thereunder) and the aggregate amount of qualified veterans' mortgage bonds issued to date by the issuer during the calendar year and prior to the date of issue of the issue for which the Form 8038 is being submitted.

(ii) With respect to issues issued after December 31, 1984, the issuer must submit a report containing information on the borrowers of the original proceeds of such issues. The report must be filed for each reporting period in which the original proceeds of any of such issues are used to provide mortgages. The issuer is not responsible for false information provided by a borrower if the issuer did not know or have reason to know that the information was false. The report must be filed on the form prescribed by the Internal Revenue Service. If no form is prescribed, or if the form prescribed is not readily available, the issuer may use its own form provided that such form is in the format set forth in paragraph (k)(3) of this section and contains the information required by this paragraph (k)(2)(ii). The report must be titled ''Qualified Mortgage Bond Information Report'' or ''Qualified Veterans' Mortgage Bond Information Report'', and must include the name, address, and TIN of the issuer, the reporting period for which the information is provided, and the following tables containing information concerning the borrowers of the original proceeds of the issues subject to the requirements of this paragraph (k)(2)(ii) with respect to mortgages provided during the reporting period for which the report is filed:

(A) A table titled ''Number of Mortgage Loans by Income and Acquisition Cost'' showing the number of mortgage loans (other than those issued in connection with qualified home improvement and rehabilitation loans) made during the reporting period according to the annualized gross income of the borrowers (categorized in the following intervals of income:

$0–$9,999
$10,000–$19,999
$20,000–$29,999
$30,000–$39,999
$40,000–$49,999
$50,000–$74,999
$75,000 or more)

and according to the acquisition cost of each residence being financed (categorized in the following intervals of acquisition cost:

$0–$19,999
$20,000–$39,999
$40,000–$59,999
$60,000–$79,999
$80,000–$99,999
$100,000–$119,999
$120,000–$149,999
$150,000–$199,999
$200,000 or more)

For each interval of income and acquisition cost the table must also be categorized according to the number of borrowers that—

(*1*) Did not have a present ownership interest in a principal residence at any time during the 3-year period ending on the date the mortgage is executed (*i.e.*, satisfied the 3-year requirement) and purchased residences in targeted areas,

(*2*) Satisfied the 3-year requirement and purchased residences not located in targeted areas,

(*3*) Did have a present ownership interest in a principal residence at any time during the 3-year period ending on the date the mortgage is executed (*i.e.*, did not satisfy the 3-year requirement) and purchased residences in targeted areas, and

(*4*) Did not satisfy the 3-year requirement and purchased residences not located in targeted areas.

With respect to issues of qualified veterans' mortgage bonds, for each interval of income and acquisition cost the table need only be categorized according to the number of borrowers that satisfied the 3-year requirement and the number of borrowers that failed to satisfy the 3-year requirement.

(B) A table titled ''Volume of Mortgage Loans by Income and Acquisition Cost'' showing the total principal amount of the mortgage loans (other than qualified home improvement and rehabilitation loans) provided during the reporting period according to annualized gross income (categorized in the same intervals of income as the preceding table) and according to the acquisition cost of the residences acquired (categorized in the same acquisition cost intervals as the preceding table). For each interval of income and acquisition cost the table must also be categorized according to the total principal amount of the mortgage loans of borrowers that—

(*1*) Satisfied the 3-year requirement and purchased residences in targeted areas,

(*2*) Satisfied the 3-year requirement and purchased residences not located in targeted areas,

(*3*) Did not satisfy the 3-year requirement and purchased residences in targeted areas, and

(*4*) Did not satisfy the 3-year requirement and purchased residences not located in targeted areas.

With respect to issues of qualified verterans' mortgage bonds, for each interval of income and acquisition cost the table need only be categorized according to the total principal amount of the mortgage loans of borrowers that satisified the 3-year requirement and the total principal amount of the mortgage loans of borrowers that did not satisfy the 3-year requirement.

(C) For issues other than qualified veterans' mortgage bonds, a table titled ''Mortgage Subsidy Bonds for Qualified Home Improvement and Rehabilitation Loans'' showing the number of borrowers obtaining qualified home improvement loans and qualified rehabilitation loans and the total of the principal amounts of such loans; the information contained in the table must also be categorized according to whether the residences with respect to which the loans were provided are located in targeted areas.

(3) *Format.* (i) With respect to the report required by paragraph (k)(2)(ii) of this section, if no form is prescribed by the Internal Revenue Service, or if the prescribed form is not readily available, the issuer must submit the report in the format specified in this paragraph (k)(3).

(ii) With respect to issues of qualified mortgage bonds, the format of the report specified in this paragraph (k)(3) is the following:

QUALIFIED MORTGAGE BOND INFORMATION REPORT

Name of issuer:
Address of issuer:
TIN of issuer:
Reporting period:

NUMBER OF MORTGAGE LOANS BY INCOME AND ACQUISITION COST

| 3-year requirement: Annualized gross monthly income of borrowers | Satisfied | | Not Satisfied | | Totals |
|---|---|---|---|---|---|
| | Nontargeted area | Targeted area | Nontargeted area | Targeted area | |
| $0 to $9,999. | | | | | |
| $10,000 to $19,999. | | | | | |
| $20,000 to $29,999. | | | | | |
| $30,000 to $39,999. | | | | | |
| $40,000 to $49,999. | | | | | |
| $50,000 to $74,999. | | | | | |
| $75,000 or more. | | | | | |
| Total. | | | | | |
| Acquisition Cost | | | | | |
| $0 to $19,999. | | | | | |
| $20,000 to $39,999. | | | | | |
| $40,000 to $59,999. | | | | | |
| $60,000 to $79,999. | | | | | |
| $80,000 to $99,999. | | | | | |
| $100,000 to $119,999. | | | | | |
| $120,000 to $149,999. | | | | | |
| $150,000 to $199,999. | | | | | |
| $200,000 or more. | | | | | |
| Total. | | | | | |

VOLUME OF MORTGAGE LOANS BY INCOME AND ACQUISITION COST

| 3-year requirement: Annualized gross monthly income of borrowers | Satisfied | | Not Satisfied | | Totals |
|---|---|---|---|---|---|
| | Nontargeted area | Targeted area | Nontargeted area | Targeted area | |
| $0 to $9,999. | | | | | |
| $10,000 to $19,999. | | | | | |
| $20,000 to $29,999. | | | | | |
| $30,000 to $39,999. | | | | | |
| $40,000 to $49,999. | | | | | |
| $50,000 to $74,999. | | | | | |
| $75,000 or more. | | | | | |
| Total. | | | | | |
| Acquisition Cost | | | | | |
| $0 to $19,999. | | | | | |
| $20,000 to $39,999. | | | | | |
| $40,000 to $59,999. | | | | | |
| $60,000 to $79,999. | | | | | |
| $80,000 to $99,999. | | | | | |
| $100,000 to $119,999. | | | | | |
| $120,000 to $149,999. | | | | | |
| $150,000 to $199,999. | | | | | |

VOLUME OF MORTGAGE LOANS BY INCOME AND ACQUISITION COST—Continued

| 3-year requirement: Annualized gross monthly income of borrowers | Satisfied | | Not Satisfied | | Totals |
|---|---|---|---|---|---|
| | Nontargeted area | Targeted area | Nontargeted area | Targeted area | |
| $200,000 or more. | | | | | |
| Total. | | | | | |

MORTGAGE SUBSIDY BONDS FOR QUALIFIED HOME IMPROVEMENT AND REHABILITATION LOANS

| | Nontargeted area | Targeted area | Totals |
|---|---|---|---|
| Number of qualified home improvement loans. | | | |
| Volume of qualified home improvement loans. | | | |
| Number of qualified rehabilitation loans. | | | |
| Volume of qualified rehabilitation loans. | | | |

(iii) The format of the report specified in this paragraph (k)(3) for qualified veterans' mortgage bonds is the following:

QUALIFIED VETERANS' MORTGAGE BOND INFORMATION REPORT

Name of issuer:
Address of issuer:
TIN of issuer:
Reporting period:

NUMBER OF MORTGAGE LOANS BY INCOME AND ACQUISITION COST

| 3-year requirement: annualized gross monthly income of borrowers | Satisfied | Not satisfied | Totals |
|---|---|---|---|
| $0 to $9,999. | | | |
| $10,000 to $19,999. | | | |
| $20,000 to $29,999. | | | |
| $30,000 to $39,999. | | | |
| $40,000 to $49,999. | | | |
| $50,000 to $74,999. | | | |
| $75,000 or more. | | | |
| Total. | | | |
| Acquistion Cost | | | |
| $0 to $19,999. | | | |
| $20,000 to $39,999. | | | |
| $40,000 to $59,999. | | | |
| $60,000 to $79,999. | | | |
| $80,000 to $99,999. | | | |
| $100,000 to $119,999. | | | |
| $120,000 to $149,999. | | | |
| $150,000 to $199,999. | | | |
| $200,000 or more. | | | |
| Total. | | | |

NUMBER OF MORTGAGE LOANS BY INCOME AND ACQUISITION COST

| 3-year requirement: annualized gross monthly income of borrowers | Satisfied | Not satisfied | Totals |
|---|---|---|---|
| $0 to $9,999. | | | |
| $10,000 to $19,999. | | | |
| $20,000 to $29,999. | | | |
| $30,000 to $39,999. | | | |
| $40,000 to $49,999. | | | |
| $50,000 to $74,999. | | | |
| $75,000 or more. | | | |
| Total. | | | |
| Acquistion Cost | | | |
| $0 to $19,999. | | | |
| $20,000 to $39,999. | | | |
| $40,000 to $59,999. | | | |
| $60,000 to $79,999. | | | |
| $80,000 to $99,999. | | | |
| $100,000 to $119,999. | | | |
| $120,000 to $149,999. | | | |
| $150,000 to $199,999. | | | |
| $200,000 or more. | | | |
| Total. | | | |

(4) *Definitions and special rules.* (i) For purposes of this paragraph the term ''annualized gross income'' means the borrower's gross monthly income muliplied by 12. Gross monthly income is the sum of monthly gross pay, any additional income from investments, pensions, Veterans Administration (VA) compensation, part-time employment, bonuses, dividends, interest, current overtime pay, net rental income, etc., and other income (such as alimony and child support, if the borrower has chosen to disclose such income). Information with respect to gross monthly income may be obtained from available loan documents, e.g., the sum of lines 23D and 23E on the Application for VA or FmHA Home Loan Guaranty or for HUD/FHA Insured Mortgage (VA Form 26–1802a, HUD 92900, Jan. 1982), or the total line from the Gross Monthly Income section of FHLMC Residential Loan Application form (FHLMC 65 Rev. 8/78). With respect to obligations issued prior to October 1, 1985, issuers may submit data based on annualized gross income or, instead, based on the adjusted income (as defined in §1.167(k)–3(b)(3)) of the mortgagor's family for the previous calendar year. If data is submitted based on adjusted income, the issuer must note this fact in the report.

(ii) For purposes of this paragraph, the term ''reporting period'' means the following periods:

(A) The period beginning January 1, 1985, and ending on September 30, 1985,

(B) The period beginning on October 1, 1985, and ending on June 30, 1986, and

(C) After June 30, 1986, each 1-year period beginning July 1 and ending June 30.

(iii) See the regulations under section 103(l) for the definitions of the terms ''date of issue'', ''maturity'', and ''term of issue''.

(iv) For purposes of this paragraph, verification of information concernig a borrower's gross monthly income with other available information concerning the borrower's income (e.g., Federal income tax returns) is not required. In determining whether a borrower acquiring a residence in a targeted area satisfies the 3-year requirement, the issuer may rely on a statement signed by the borrower.

(5) *Time for filing.* (i) The report required by paragraph (k)(2)(i) of this section shall be filed not later than the 15th day of the second calendar month after the close of the calendar quarter in which the obligation is issued. The statement may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date of issue. The statement need not be amended to report information learned subsequent to the date of issue or to reflect changed circumstances with respect to the issuer.

(ii) The report required by paragraph (k)(2)(ii) of this section (relating to use of proceeds) shall be filed not later than the 15th day of the second calendar month after the close of the reporting period, except that the report for the reporting period ending September 30, 1985, is due not later than February 15, 1986. The report may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date the report is filed. The report need not be amended to reflect information learned subsequent to the date the report is filed or to reflect changed circumstances with respect to any borrower.

(iii) The Commissioner may grant an extension of time for the filing of a report required by paragraph (k)(2) (i) or (ii) of this section if there is reasonable cause for the failure to file such report in a timely fashion.

(iv) An issue of qualified veterans' mortgage bonds issued after July 18, 1984, and prior to January 1, 1985, will be treated as satisfying the information reporting requirement of this paragraph if a Form 8038 with respect to the issue is properly filed not later than February 15, 1985; the report described in paragraph (k)(2)(ii) of this section need not be filed with respect to such issues.

(6) *Place for filing.* The reports required by paragraph (k)(2) (i) and (ii) of this section are to be filed at the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(l) *Policy statement*—(1) *In general.* (i) For obligations issued after December 31, 1984, an issue meets the requirements of this paragraph only if the applicable elected representative of the governmental unit which is the issuer (or on behalf of which the issuing authority is empowered to issue qualified mortgage bonds) has published (after a public hearing following reasonable public notice) the report described in paragraph (l)(3) of this section by the last day of the year preceding the year in which such issue is issued and a copy of such report has been submitted to the Commissioner on or before such last day. The Commissioner may grant an extension of time for publishing and filing the report if there is reasonable cause for the failure to publish or file such report in a timely fashion. The requirements of this paragraph will be treated as met if the issuer in good faith attempted to meet the policy statement requirements of this paragraph.

(ii) With respect to reports required by paragraph (l)(1)(i) of this section to be published and submitted to the Commissioner not later than December 31, 1984, the Commissioner has determined that there is reasonable cause for the failure to publish or file such reports in a timely fashion; such a report will be considered published and filed in a timely fashion if, not later than March 11, 1985, the report is published (after a public hearing following reasonable public notice) and a copy is submitted to the Commissioner. In addition, any report submitted not later than December 31, 1984, with respect to which an issuer in good faith attempted to satisfy the requirements of section 103A(j)(5) shall be treated as substantially satisfying the requirements of this paragraph. For example, with respect to a report submitted not later than December 31, 1984, an issuer shall not be treated as failing to satisfy the requirements of section 103A(j)(5) based on the fact that (A) the notice of public hearing failed to state the manner in which affected residents may obtain copies of the proposed report prior to the hearing, or (B) the proposed report was not available prior to or at the public hearing. With respect to reports required to be published and submitted to the Commissioner not later than December 31, 1986, the Commissioner has determined that there is a reasonable cause for the failure to publish and file such reports in a timely fashion; such reports will be considered published and filed in a timely fashion if, not later than December 31, 1987, the report is published (after having a public hearing following reasonable public notice) and a copy is submitted to the Commissioner.

(2) *Definitions and special rules.* (i) In the case of an issuer that issues qualified mortgage bonds on behalf of one or more governmental units, a single report may be filed provided that such report is signed (A) by the applicable elected representative of each governmental unit on whose behalf obligations have been issued during any preceding calendar year or (B) by the Governor of the State in which the issuer is located.

(ii) See notice 103(k)(2)(E) and the regulations thereunder for the definition of the term ''applicable elected representative''.

(iii) In the case of qualified mortgage bonds issued by, or on behalf of, a governmental unit that did not reasonably expect during the preceding calendar year to issue (or have issued on its behalf by any other issuer) qualified mortgage bonds during the current calendar year, the requirements of this paragraph will be treated as met if the applicable governmental unit which is the issuer (or on behalf of which the issuing authority is empowered to issue qualified mortgage bonds) has published (after a public hearing following reasonable public notice) the report described in paragraph (l)(3) of this section prior to the issuance of any qualified mortgage bonds and a copy of such report has been submitted to the Commissioner prior to such issuance.

(iv) For purposes of this paragraph a report will be considered to be ''published'' when the applicable elected representative of the governmental unit has made copies of the report available for distribution to the public. Reasonable public notice of the manner in which copies of the report may be obtained must be provided; such notice may be included as part of the public notice required by paragraph (l)(4) of this section.

(3) *Report.* (i) A report is described in this paragraph (l)(3) if it contains the issuer's name, TIN, and the title ''Policy Report Under Section 103A'' stated on the cover page of the report and if it includes—

(A) A statement of the policies of the issuer with respect to housing, development, and low-income housing assistance which such issuer is to follow in issuing qualified mortgage bonds and mortgage credit certificates, and

(B) An assessment of the compliance of such issuer during the 1-year period preceding the date of the report with—

(*1*) The statement of policy on qualified mortgage bonds and mortgage credit certificates that was set forth in the previous report, if any, of the issuer, and

(*2*) The intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families.

(ii) For example, a report described in this paragraph (l)(3) may (but is not required to) contain—

(A) A specific statement of the policies with respect to housing, development, and low-income housing assistance which the issuer is to follow in issuing qualified mortgage bonds and mortgage credit certificates, including, for example, a statement as to—

(*1*) With respect to housing policies, (*i*) whether the proceeds will be used to provide financing for the acquisition of residences, to provide qualified home improvement loans, or to provide qualified rehabilitation loans; (*ii*) whether all or a portion of the proceeds will be targeted to new, existing, or any other particular class or type of housing; (*iii*) how the existence of a need or absence of a need for such targeting has been determined; (*iv*) the method by which the proceeds will be targeted; (*v*) any other pertinent information relating to the issuer's housing policies; and (*vi*) how the housing policies relate to the issuer's development and low-income housing assistance policies;

(*2*) With respect to development policies, (*i*) whether all or a portion of the proceeds will be targeted to specific areas (including targeted areas as described in § 6a.103A–2(b)(3)); (*ii*) a description of the areas to which the proceeds will be targeted; (*iii*) the reasons for selecting such areas; (*iv*) whether proceeds targeted to each area are to be used to finance redevelopment of existing housing or new construction; (*v*) any other pertinent information relating to the issuer's development policies; and (*vi*) how the development policies relate to the issuer's low-income housing assistance policies; and

(*3*) With respect to low-income housing assistance policies, (*i*) whether all or a portion of the proceeds will be targeted to low-income (*i.e.*, 80 percent of median income), moderate-income (*i.e.*, 100 percent of median income), or any other class of borrowers; (*ii*) the method by which the proceeds will be targeted to such borrowers; and (*iii*) any other pertinent information relating to the issuer's low-income housing assistance policies;

(B) An assessment of the compliance of the governmental unit or issuing authority during the twelve-month period ending with the date of the report with the statement of housing, development, and low-income housing assistance policies with respect to qualified mortgage bonds and mortgage credit certificates that were set forth in the report, if any, published in the preceding year with respect to such governmental unit, including, for example, a statement as to whether the governmental unit or issuing authority successfully implemented its policies and, if not, an analysis of the reasons for such failure; and

(C) An assessment of the compliance of the governmental unit or issuing authority during the twelve-month period ending with the date of the report with the intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families, including, for example, a description of (*1*) the method used by the governmental unit or issuing authority to distribute proceeds, (*2*) whether and how that method enabled the governmental unit or issuing authority to assist lower income families before higher income families, and (*3*) any income levels that have been defined and used by the governmental unit or issuing authority in connection with distribution of the proceeds (no specific definition of lower income and higher income is imposed on governmental units or issuing authorities).

(iii) For purposes of the assessments of compliance required by paragraph (l)(3)(i)(B) of this section to be included in the report, the ''date of the report'' means June 30. For purposes of the report required to be filed prior to January 1, 1986, an issuer need not perform these assessments of compliance with respect to any period prior to January 1, 1985.

(iv) An issuer that fails to establish policies with respect to the criteria provided in paragraph (l)(3)(i) of this section will not be treated as failing to satisfy the requirements of this paragraph. Thus, for example, an issuer may state in its report that none of the proceeds of the issue will be targeted to specific areas. Similarly, an issuer that fails to successfully implement its policies will not be treated as failing to satisfy the requirements of this paragraph.

(4) *Public hearing.* The public hearing required by paragraph (l)(1) of this section means a forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the report that the applicable representative proposes to publish to satisfy the requirements of this paragraph (l). A public hearing held prior to January 1, 1985, will not fail to satisfy the requirements of this paragraph (l)(4) merely because the proposed policy statement was not available prior to the public hearing. In general, a governmental unit may select its own procedure for the hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, it may impose reasonable requirements on persons who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing so request in writing at least 24 hours before the hearing or that they limit their oral remarks to 10 minutes. For purposes of this public hearing requirement, it is not necessary that the applicable elected representative who will publish the report be present at the hearing, that a report on the hearing be submitted to that official, or that State administrative procedural requirements for public hearings in general be observed. However, compliance with such State procedural requirements (except those at variance with a specific requirement set forth in this paragraph) will generally assure that the hearing satisfies the requirements of this paragraph. The hearing may be conducted by any individual appointed or employed to perform such function by the governmental unit, its agencies, or by the issuer. Thus, for example, for a report to be issued by an issuing authority that acts on behalf of a county, the hearing may be conducted by the issuing authority, the county, or an appointee or employee of either.

(5) *Reasonable public notice.* (i) The reasonable public notice required by paragraph (l)(1) of this section means published notice which is reasonably designed to inform residents of the geographical area within the jurisdiction of the governmental unit that will publish the report. The notice must state the time and place for the hearing and contain the information required by paragraph (l)(5)(ii) of this section. Notice is presumed reasonable if published no fewer than 14 days before the hearing. Notice is presumed reasonably designed to inform affected residents only if published in one or more newspapers of general circulation available to residents of that locality or if announced by radio or televison broadcast to those residents.

(ii) The notice of hearing described in this paragraph (l)(5) must state—

(A) The time and place for the hearing,

(B) Any applicable limitations regarding participation in the hearing,

(C) With respect to any notice of hearing published after December 31, 1984, the manner in which affected residents may obtain copies of the proposed report prior to the hearing, and

(D) With respect to any notice of hearing published after December 31, 1984, that the hearing will involve the issuer's policies with respect to housing, development, and low-income housing assistance which the issuer is to follow in issuing qualified mortgage bonds and mortgage credit certificates.

(6) *Procedure for public hearings of multiple jurisdiction issuers.* In the case of an issuer that issues qualified mortgage bonds on behalf of two or more governmental units (''multiple jurisdiction issuer''), each governmental unit on whose behalf the issuer reasonably expects to issue qualified mortgage bonds during the succeeding calendar year must hold a public hearing following reasonable public notice prior to the publication of the report required by this paragraph. A multiple jurisdiction issuer may hold a combined hearing as long as the combined hearing is a joint undertaking that provides all residents of the participating governmental units (*i.e.*, each governmental unit on whose behalf qualified mortgage bonds were issued by the authority and each governmental unit on whose behalf the authority reasonably expects to issue qualified mortgage bonds during the succeeding calendar year) a reasonable opportunity to be heard. The location of any combined hearing is presumed to provide a reasonable opportunity for

all affected residents to be heard if it is no farther than 100 miles from the seat of government of each participating governmental unit beyond whose geographic jurisdiction the hearing is conducted.

(7) *Place for filing.* The report is to be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(m) *State certification requirements*—(1) *In general.* An issue meets the requirements of this paragraph only if the issuer in good faith attempted to meet the State certification requirements of this paragraph. The requirements of this paragraph apply to obligations issued after December 31, 1984; see section 149(e) and the regulations thereunder with respect to obligations issued after December 31, 1986.

(2) *Certification.* (i) An issue satisfied the requirements of section 103A(j)(4) and this paragraph (m)(2) only if the State official designated by law (or, if there is no State official, the Governor) certifies on or before the later of the date of issue or October 3, 1985, following a request for such certification by the issuer, that, as of the date the certification is executed, the issue meets the requirements of section 103A(g) and the regulations thereunder (relating to volume limitation). In the case of any constitutional home rule city, the certification shall be made by the chief executive officer of the city. To the extent consistent with State and local law, the Governor (or the chief executive officer of any constitutional home rule city) may delegate the responsibility to execute the certification required by this paragraph.

(ii) The certifying official need not perform an independent investigation in order to determine whether the issue meets the requirements of section 103A(g). In determining the aggregate amount of qualified mortgage bonds previously issued by an issuer during a calendar year, the certifying official may rely on copies of the reports submitted, to date, by the issuer pursuant to section 103A(j)(3) for other issues of qualified mortgage bonds issued during that year and copies of any elections previously made pursuant to section 25(c)(2) not to issue qualified mortgage bonds, together with an affidavit executed by an officer of the issuer responsible for issuing the bonds stating that the issuer has not, to date during the calendar year, issued any other qualified mortgage bonds, the amount, if any, of the issuer's market limitation that it has, to date during the calendar year, surrendered to other issuing authorities, and that it has not, to date during the calendar year, made any other elections not to issue qualified mortgage bonds. If, based on such information, the certifying official determines that, as of the date the certification is executed, the issue will not exceed the issuer's market limitation for the year, the official may certify that the issue meets the requirements of section 103A(g).

(3) *Special rule.* If 15 days elapse after the issuer files a proper request for the certification described in paragraph (m)(2) of this section and the issuer has not received from the State official designated by law (or, if there is no State official, the Governor) certification that the issue meets the requirements of section 103A(g) and § 6a.103A–2(g) or, in the alternative, a statement that the issue does not meet such requirements, the issuer may, instead, submit an affidavit executed by an officer of the issuer responsible for issuing the bonds stating that—

(i) The issue meets the requirements of section 103(A)(g) and § 6a.103A–2(g),

(ii) At least 15 days before the execution of the affidavit the issuer filed a proper request for the certification described in paragraph (m)(2) of this section, and

(iii) The State official designated by law (or, if there is no State official, the Governor) has not provided the certification described in paragraph (m)(2) of this section.

In the case of obligations issued prior to October 4, 1985 the preceding sentence shall be applied by substituting "30 days" for "15 days". For purposes of this paragraph, a request for certification is proper if the request includes the reports and affidavits described in paragraph (m)(2)(ii) of this section.

(4) *Filing.* The certification (or affidavit) required by this paragraph shall be filed with the Internal Revenue Service Center, Philadelphia, PA 19255. The certification (or affidavit) shall be

submitted with the Form 8038 required to be filed by section 103A(j)(3) and paragraph (k) of this § 1.103A–2. The Commissioner may grant an extension of time for filing the certification (or affidavit) if there is a reasonable cause for the failure to file such statement in a timely fashion.

(5) *Effect of certification.* The fact that an issuer obtains the certification (or affidavit) described in this paragraph does not ensure that the requirements of paragraph (g) of § 6a.103A–2 are met. Obligations that do not meet the requirements of paragraph (g) of § 6a.103A–2 are not described in section 103(a).

[T.D. 8049, 50 FR 35542, Sept. 3, 1985, as amended by T.D. 8129, 52 FR 7410, Mar. 11, 1987]

### § 1.104–1 Compensation for injuries or sickness.

(a) *In general.* Section 104(a) provides an exclusion from gross income with respect to certain amounts described in paragraphs (b), (c), (d) and (e) of this section, which are received for personal injuries or sickness, except to the extent that such amounts are attributable to (but not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year. See section 213 and the regulations thereunder.

(b) *Amounts received under workmen's compensation acts.* Section 104(a)(1) excludes from gross income amounts which are received by an employee under a workmen's compensation act (such as the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C., c. 18), or under a statute in the nature of a workmen's compensation act which provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a nonoccupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts. See, however, §§ 1.105–1 through 1.105–5 for rules relating to exclusion of such amounts from gross income.

(c) *Damages received on account of personal physical injuries or physical sickness*—(1) *In general.* Section 104(a)(2) excludes from gross income the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness. Emotional distress is not considered a physical injury or physical sickness. However, damages for emotional distress attributable to a physical injury or physical sickness are excluded from income under section 104(a)(2). Section 104(a)(2) also excludes damages not in excess of the amount paid for medical care (described in section 213(d)(1)(A) or (B)) for emotional distress. For purposes of this paragraph (c), the term *damages* means an amount received (other than workers' compensation) through prosecution of a legal suit or action, or through a settlement agreement entered into in lieu of prosecution.

(2) *Cause of action and remedies.* The section 104(a)(2) exclusion may apply to damages recovered for a personal physical injury or physical sickness under a statute, even if that statute does not provide for a broad range of remedies. The injury need not be defined as a tort under state or common law.

(3) *Effective/applicability date.* This paragraph (c) applies to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after January 23, 2012. Taxpayers also may apply these final regulations to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after August 20, 1996. If applying these final regulations to

damages received after August 20, 1996, results in an overpayment of tax, the taxpayer may file a claim for refund before the period of limitations under section 6511 expires. To qualify for a refund of tax on damages paid after August 20, 1996, under a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, a taxpayer must meet the requirements of section 1605 of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1838).

(d) *Accident or health insurance.* Section 104(a)(3) excludes from gross income amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent that such amounts (1) are attributable to contributions of the employer which were not includible in the gross income of the employee, or (2) are paid by the employer). Similar treatment is also accorded to amounts received under accident or health plans and amounts received from sickness or disability funds. See section 105(e) and §1.105–5. If, therefore, an individual purchases a policy accident or health insurance out of his own funds, amounts received thereunder for personal injuries or sickness are excludable from his gross income under section 104(a)(3). See, however, section 213 and the regulations thereunder as to the inclusion in gross income of amounts attributable to deductions allowed under section 213 for any prior taxable year. Section 104(a)(3) also applies to amounts received by an employee for personal injuries or sickness from a fund which is maintained exclusively by employee contributions. Conversely, if an employer is either the sole contributor to such a fund, or is the sole purchaser of a policy of accident or health insurance for his employees (on either a group or individual basis), the exclusion provided under section 104(a)(3) does not apply to any amounts received by his employees through such fund or insurance. If the employer and his employees contribute to a fund or purchase insurance which pays accident or health benefits to employees, section 104(a)(3) does not apply to amounts received thereunder by employees to the extent that such amounts are attributable to the employer's contributions. See §1.105–1 for rules relating to the determination of the amount attributable to employer contributions. Although amounts paid by or on behalf of an employer to an employee for personal injuries or sickness are not excludable from the employee's gross income under section 104(a)(3), they may be excludable therefrom under section 105. See §§1.105–1 through 1.105–5, inclusive. For treatment of accident or health benefits paid to or on behalf of a self- employed individual by a trust described in section 401(a) which is exempt under section 501(a) or under a plan described in section 403(a), see paragraph (g) of §1.72–15.

(e) *Amounts received as pensions, etc., for certain personal injuries or sickness.* (1) Section 104(a)(4) excludes from gross income amounts which are received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country, or in the Coast and Geodetic Survey, or the Public Health Service. For purposes of this section, that part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of 10 U.S.C. 1401, or under 10 U.S.C. 1402(d), on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury or sickness, resulting from active service in the armed forces of any country, or in the Coast and Geodetic Survey, or the Public Health Service (see 10 U.S.C. 1403 (formerly 37 U.S.C. 272(h), section 402(h) of the Career Compensation Act of 1949)). See paragraph (a)(3)(i)(*a*) of §1.105–4 for the treatment of retired pay in excess of the part computed on the basis of percentage of disability as amounts received through a wage continuation plan. For the rules relating to certain reduced uniformed services retirement pay, see paragraph (c)(2) of §1.122–1. For rules relating to a waiver by a member or former member of the uniformed services of a portion of disability retired pay in favor of a pension or compensation receivable under the laws administered by the Veterans Administration (38 U.S.C. 3105), see § 1.122–1(c)(3). For rules relating to a reduction of the disability retired pay of a member or former member of the uniformed services under the Dual Compensation Act of 1964 (5 U.S.C. 5531) by reason of Federal employment, see § 1.122–1(c)(4).

(2) Section 104(a)(4) excludes from gross income amounts which are received by a participant in the Foreign Service Retirement and Disability System in a taxable year of such participant ending after September 8, 1960, as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021). However, if any amount is received by a survivor of a disabled or incapacitated participant, such amount is not excluded from gross income by reason of the provisions of section 104(a)(4).

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6722, 29 FR 5070, Apr. 14, 1964; T.D. 7043, 35 FR 8477, June 2, 1970; T.D. 9573, 77 FR 3107, Jan. 23, 2012]

### § 1.105–1 Amounts attributable to employer contributions.

(a) *In general.* Under section 105(a), amounts received by an employee through accident or health insurance for personal injuries or sickness must be included in his gross income to the extent that such amounts (1) are attributable to contributions of the employer which were not includible in the gross income of the employee, or (2) are paid by the employer, unless such amounts are excluded therefrom under section 105(b), (c), or (d). For purposes of this section, the term ''amounts received by an employee through an accident or health plan'' refers to any amounts received through accident or health insurance, and also to any amounts which, under section 105(e), are treated as being so received. See § 1.105–5. In determining the extent to which amounts received for personal injuries or sickness by an employee through an accident or health plan are subject to the provisions of section 105(a), rather than section 104(a)(3), the provisions of paragraphs (b), (c), (d), and (e) of this section shall apply. A self-employed individual is not an employee for purposes of section 105 and §§ 1.105–1 through 1.105–5. See paragraph (g) of § 1.72–15. Thus, such an individual will not be treated as an employee with respect to benefits described in section 105 received from a plan in which he participates as an employee within the meaning of section 401(c)(1) at the time he, his spouse, or any of his dependents becomes entitled to receive such benefits.

(b) *Noncontributory plans.* All amounts received by employees through an accident or health plan which is financed solely by their employer, either by payment of premiums on an accident or health insurance policy (whether on a group or individual basis), by contributions to a fund which pays accident or health benefits, or by direct payment of the benefits under the plan, are subject to the provisions of section 105(a), except to the extent that they are excludable under section 105(b), (c), or (d). This rule may be illustrated by the following examples:

*Example 1.* Employer A maintains a plan for his employees which provides that he will continue to pay regular wages to employees who are absent from work due to sickness or personal injuries. Employees make no contributions to the plan and all benefits are paid by the employer. Amounts received by employees under the plan are subject to section 105(a), and must be included in gross income unless excluded therefrom under section 105(b), (c), or (d).

*Example 2.* Pursuant to a State nonoccupational disability benefits law, employer B maintains an accident and health plan for his employees. Although under the State law B is authorized to withhold from his employees' wages a specified amount for employee contributions to the State fund, in actual practice B does not so withhold and makes all contributions out of his own funds. All amounts received by B's employees from the State fund are subject to section 105(a), and must be included in gross income unless excluded therefrom under section 105 (b), (c), or (d).

(c) *Contributory plans.* (1) In the case of amounts received by an employee through an accident or health plan which is financed partially by his employer and partially by contributions of the employee, section 105(a) applies to the extent that such amounts are attributable to contributions of the employer which were not includible in the employee's gross income. The portion of such amounts which is attributable to such contributions of the employer shall be determined in accordance with paragraph (d) of this section in the case of an insured plan, or paragraph (e) of this section in the case of a noninsured plan. As used in this section, the phrase ''contributions of the employer'' means employer contributions which were not includible in the gross income of the employee. See section 106 for the exclusion from an employee's gross income of employer contributions to accident or health plans.

(2) A separate determination of the portion of the amounts received under the accident or health plan which is attributable to the contributions of the employer shall be made with respect to each class of employees in any case where the plan provides that some classes of covered employees contribute but others do not, or that the employer will make different contributions for different classes of employees, or that different classes of employees will make different contributions, and where in any such case both the contributions of the employer on account of each such class of employees and the contributions of such class of employees can be ascertained. For example, if employees contribute during the first year of employment but not thereafter, there will have to be a separate determination for first year employees, provided that the amount of the contributions of the employer on account of first-year employees and the contributions of such first-year employees can be ascertained for the required periods to apply the rules of paragraph (d) or (e) of this section. If in such a case the contributions of the employer to the plan on account of first-year employees are not distinguishable from his other contributions to the plan, then the determination shall be made for all employees under the plan, and such determination shall be used by all employees under the plan.

(3) Except as provided in paragraph (c)(2) of §1.72–15, if the plan provides accident or health benefits as well as other benefits for the employees, and if the respective contributions made by the employer and the employees to provide the accident or health benefits cannot be ascertained, the determination of the portion of the accident or health benefits received under such plan which is attributable to the contributions of the employer shall be made in accordance with the rules of paragraph (d) or (e) of this section on the basis of the contributions of the employer and of the employees to the entire plan.

(4) A determination of the portion attributable to the contributions of the employer, once made in accordance with the rules of this section, shall as to such portion be used for all purposes. For example, if an employee receives amounts under a wage continuation plan during the month of January and terminates his services during February, the portion of such amounts which is attributable to the contributions of the employer may be determined in order to provide the employee with such information at the time he is provided his Form W-2. The determination made for such purpose will also be used by the employee to report his income for his taxable year in which such amounts are received, without regard to the experience under the plan for the rest of the year.

(d) *Insured plans*—(1) *Individual policies.* If an amount is received from an insurance company by an employee under an individual policy of accident or health insurance purchased by contributions of the employer and the employee, the portion of the amount received which is attributable to the employer's contributions shall be an amount which bears the same ratio to the amount received as the portion of the premiums paid by the employer for the current policy year bears to the total premiums paid by the employer and the employee for that year. This rule may be illustrated by the following example:

*Example.* Employer A maintains a plan whereby he pays two-thirds of the annual premium cost on individual policies of accident and health insurance for his employees. The remainder of each employee's premium is paid by a payroll deduction from the wages of the employee. The annual premium for employee X is $24, of which $16 is paid by the employer. Thus, 16/24 or two-thirds of all amounts received by X under such insurance policy are attributable to the contributions of the employer and are subject to section

105(a), and the remaining one-third of such amounts is excludable from X's gross income under section 104(a)(3).

(2) *Group policies.* If the accident or health coverage is provided under or is a part of a group insurance policy purchased by contributions of the employer and of the employees, and the net premiums for such coverage for a period of at least three policy years are known at the beginning of the calendar year, the portion of any amount received by an employee which is attributable to the contributions of the employer for such coverage shall be an amount which bears the same ratio to the amount received as the portion of the net premiums contributed by the employer for the last three policy years which are known at the beginning of the calendar year, bears to the total of the net premiums contributed by the employer and all employees for such policy years. If the net premiums for such coverage for a period of at least three policy years are not known at the beginning of the calendar year but are known for at least one policy year, such determination shall be made by using the net premiums for such coverage which are known at the beginning of the calendar year. If the net premiums for such coverage are not known at the beginning of the calendar year for even one policy year, such determination shall be made by using either (i) a reasonable estimate of the net premiums for the first policy year, or (ii) if the net premiums for a policy year are ascertained during the calendar year, by using such net premiums. These rules may be illustrated by the following example:

*Example.* An employer maintains a plan under which a portion of the cost of a group policy of accident and health insurance for his employees is paid through payroll deductions from wages of the employees. The remainder of the cost is borne by the employer. The policy year begins on November 1 and ends on October 31. The net premium for the policy year ended October 31, 1954, is not known on January 1, 1955, because certain retroactive premium adjustments, such as dividends and credits, are not determinable until after January 1. Therefore, for purposes of this computation the last three policy years are the policy years ended October 31, 1951, 1952, and 1953. The net premium for the policy year ended October 31, 1953, was $8,000, of which the employer contributed $3,000; the net premium for the policy year ended October 31, 1952, was $9,000, of which the employer contributed $3,500; and the net premium for the policy year ended October 31, 1951, was $7,000, of which the employer contributed $1,500. The portion of any amount received under the policy by an employee at any time during 1955 which is attributable to the contributions of the employer is to be determined by using the ratio of $8,000 ($3,000 plus $3,500 plus $1,500) to $24,000 ($8,000 plus $9,000 plus $7,000. Thus, $8,000 ÷ $24,000 or one-third, of the amounts received by an employee at any time during 1955 is attributable to contributions of the employer.

(e) *Noninsured plans.* If the accident or health benefits are a part of a noninsured plan to which the employer and the employees contribute, and such plan has been in effect for at least three years before the beginning of the calendar year, the portion of the amount received which is attributable to the employer's contributions shall be an amount which bears the same ratio to the amount received as the contributions of the employer for the period of three calendar years next preceding the year of receipt bear to the total contributions of the employer and all the employees for such period. If, at the beginning of the calendar year of receipt, such plan has not been in effect for three years but has been in effect for at least one year, such determination shall be based upon the contributions made during the 1-year or 2-year period during which the plan has been in effect. If such plan has not been in effect for one full year at the beginning of the calendar year of receipt, such determination may be based upon the portion of the year of receipt preceding the time when the determination is made, or such determination may be made periodically (such as monthly or quarterly) and used throughout the succeeding period. For example, if an employee terminates his services on April 15, 1955, and 1955 is the first year the plan has been in effect, such determination may be based upon the contributions of the employer and the employees during the period beginning with January 1 and ending with April 15, or during the month of

March, or during the quarter consisting of January, February, and March.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6722, 29 FR 5071, Apr. 14, 1964]

### § 1.105–2 Amounts expended for medical care.

Section 105(b) provides an exclusion from gross income with respect to the amounts referred to in section 105(a) (see § 1.105–1) which are paid, directly or indirectly, to the taxpayer to reimburse him for expenses incurred for the medical care (as defined in section 213(e)) of the taxpayer, his spouse, and his dependents (as defined in section 152). However, the exclusion does not apply to amounts which are attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year. See section 213 and the regulations thereunder. Section 105(b) applies only to amounts which are paid specifically to reimburse the taxpayer for expenses incurred by him for the prescribed medical care. Thus, section 105(b) does not apply to amounts which the taxpayer would be entitled to receive irrespective of whether or not he incurs expenses for medical care. For example, if under a wage continuation plan the taxpayer is entitled to regular wages during a period of absence from work due to sickness or injury, amounts received under such plan are not excludable from his gross income under section 105(b) even though the taxpayer may have incurred medical expenses during the period of illness. Such amounts may, however, be excludable from his gross income under section 105(d). See § 1.105–4. If the amounts are paid to the taxpayer solely to reimburse him for expenses which he incurred for the prescribed medical care, section 105(b) is applicable even though such amounts are paid without proof of the amount of the actual expenses incurred by the taxpayer, but section 105(b) is not applicable to the extent that such amounts exceed the amount of the actual expenses for such medical care. If the taxpayer incurs an obligation for medical care, payment to the obligee in discharge of such obligation shall constitute indirect payment to the taxpayer as reimbursement for medical care. Similarly, payment to or on behalf of the taxpayer's spouse or dependents shall constitute indirect payment to the taxpayer.

### § 1.105–3 Payments unrelated to absence from work.

Section 105(c) provides an exclusion from gross income with respect to the amounts referred to in section 105(a) to the extent that such amounts (a) constitute payments for the permanent loss or permanent loss of use of a member or function of the body, or the permanent disfigurement, of the taxpayer, his spouse, or a dependent (as defined in section 152), and (b) are computed with reference to the nature of the injury without regard to the period the employee is absent from work. Loss of use or disfigurement shall be considered permanent when it may reasonably be expected to continue for the life of the individual. For purposes of section 105(c), loss or loss of use of a member or function of the body includes the loss or loss of use of an appendage of the body, the loss of an eye, the loss of substantially all of the vision of an eye, and the loss of substantially all of the hearing in one or both ears. The term ''disfigurement'' shall be given a reasonable interpretation in the light of all the particular facts and circumstances. Section 105(c) does not apply if the amount of the benefits is determined by reference to the period the employee is absent from work. For example, if an employee is absent from work as a result of the loss of an arm, and under the accident and health plan established by his employer, he is to receive $125 a week so long as he is absent from work for a period not in excess of 52 weeks, section 105(c) is not applicable to such payments. See, however, section 105(d) and § 1.105–4. However, for purposes of section 105(c), it is immaterial whether an amount is paid in a lump sum or in installments. Section 105(c) does not apply to amounts which are treated as workmen's compensation under paragraph (b) of § 1.104–1, or to amounts paid by reason of the death of the employee (see section 101).

## § 1.105–5 Accident and health plans.

(a) *In general.* Sections 104(a)(3) and 105 (b), (c), and (d) exclude from gross income certain amounts received through accident or health insurance. Section 105(e) provides that for purposes of sections 104 and 105 amounts received through an accident or health plan for employees, and amounts received from a sickness and disability fund for employees maintained under the law of a State, a Territory, or the District of Columbia, shall be treated as amounts received through accident or health insurance. In general, an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness. A plan may cover one or more employees, and there may be different plans for different employees or classes of employees. An accident or health plan may be either insured or noninsured, and it is not necessary that the plan be in writing or that the employee's rights to benefits under the plan be enforceable. However, if the employee's rights are not enforceable, an amount will be deemed to be received under a plan only if, on the date the employee became sick or injured, the employee was covered by a plan (or a program, policy, or custom having the effect of a plan) providing for the payment of amounts to the employee in the event of personal injuries or sickness, and notice or knowledge of such plan was reasonably available to the employee. It is immaterial who makes payment of the benefits provided by the plan. For example, payment may be made by the employer, a welfare fund, a State sickness or disability benefits fund, an association of employers or employees, or by an insurance company.

(b) *Self-employed individuals.* Under section 105(g), a self-employed individual is not treated as an employee for purposes of section 105. Therefore, for example, benefits paid under an accident or health plan as referred to in section 105(e) to or on behalf of an individual who is self-employed in the business with respect to which the plan is established will not be treated as received through accident and health insurance for purposes of sections 104(a)(3) and 105.

[T.D. 6722, 29 FR 5071, Apr. 14, 1964]

## § 1.105–11 Self-insured medical reimbursement plan.

(a) *In general.* Under section 105(a), amounts received by an employee through a self-insured medical reimbursement plan which are attributable to contributions of the employer, or are paid by the employer, are included in the employee's gross income unless such amounts are excludable under section 105(b). For amounts reimbursed to a highly compensated individual to be fully excludable from such individual's gross income under section 105(b), the plan must satisfy the requirements of section 105(h) and this section. Section 105(h) is not satisfied if the plan discriminates in favor of highly compensated individuals as to eligibility to participate or benefits. All or a portion of the reimbursements or payments on behalf of such individuals under a discriminatory plan are not excludable from gross income under section 105(b). However, benefits paid to participants who are not highly compensated individuals may be excluded from gross income if the requirements of section 105(b) are satisfied, even if the plan is discriminatory.

(b) *Self-insured medical reimbursement plan*—(1) *General rule*—(i) *Definition.* A self-insured medical reimbursement plan is a separate written plan for the benefit of employees which provides for reimbursement of employee medical expenses referred to in section 105(b). A plan or arrangement is self-insured unless reimbursement is provided under an individual or group policy of accident or health insurance issued by a licensed insurance company or under an arrangement in the nature of a prepaid health care plan that is regulated under federal or state law in a manner similar to the regulation of insurance companies. Thus, for example, a plan of a health maintenance organization, established under the Health Maintenance Organization Act of 1973, would qualify as a prepaid health care plan. In addition, this section applies to a self-insured medical reimbursement plan, determined in accordance with the rules of this section, maintained by an employee organization described in section 501(c)(9).

(ii) *Shifting of risk.* A plan underwritten by a policy of insurance or a prepaid health care plan that does not involve the shifting of risk to an unrelated third party is considered self-insured for purposes of this section. Accordingly, a cost-plus policy or a policy which in effect merely provides administrative or bookkeeping services is considered self-insured for purposes of this section. However, a plan is not considered self-insured merely because one factor the insurer uses in determining the premium is the employer's prior claims experience.

(iii) *Captive insurance company.* A plan underwritten by a policy of insurance issued by a captive insurance company is not considered self-insured for purposes of this section if for the plan year the premiums paid by companies unrelated to the captive insurance company equal or exceed 50 percent of the total premiums received and the policy of insurance is similar to policies sold to such unrelated companies.

(2) *Other rules.* The rules of this section apply to a self-insured portion of an employer's medical plan or arrangement even if the plan is in part underwritten by insurance. For example, if an employer's medical plan reimburses employees for benefits not covered under the insured portion of an overall plan, or for deductible amounts under the insured portions, such reimbursement is subject to the rules of this section. However, a plan which reimburses employees for premiums paid under an insured plan is not subject to this section. In addition, medical expense reimbursements not described in the plan are not paid pursuant to a plan for the benefit of employees, and therefore are not excludable from gross income under section 105(b). Such reimbursements will not affect the determination of whether or not a plan is discriminatory.

(c) *Prohibited discrimination*—(1) *In general.* A self-insured medical reimbursement plan does not satisfy the requirements of section 105(h) and this paragraph for a plan year unless the plan satisfies subparagraphs (2) and (3) of this paragraph. However, a plan does not fail to satisfy the requirements of this paragraph merely because benefits under the plan are offset by benefits paid under a self-insured or insured plan of the employer or another employer, or by benefits paid under Medicare or other Federal or State law or similar foreign law. A self-insured plan may take into account the benefits provided under another plan only to the extent that the type of benefit subject to reimbursement is the same under both plans. For example, an amount reimbursed to an employee for a hospital expense under a medical plan maintained by the employer of the employee's spouse may be offset against the self-insured benefit where the self-insured plan covering the employee provides the same type of hospital benefit.

(2) *Eligibility to participate*—(i) *Percentage test.* A plan satisfies the requirements of this subparagraph if it benefits—

(A) Seventy percent or more of all employees, or

(B) Eighty percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan.

(ii) *Classification test.* A plan satisfies the requirements of this subparagraph if it benefits such employees as qualify under a classification of employees set up by the employer which is found by the Internal Revenue Service not to be discriminatory in favor of highly compensated individuals. In general, this determination will be made based upon the facts and circumstances of each case, applying the same standards as are applied under section 410(b)(1)(B) (relating to qualified pension, profit-sharing and stock bonus plans), without regard to the special rules in section 401(a)(5) concerning eligibility to participate.

(iii) *Exclusion of certain employees.* Under section 105(h)(3), for purposes of this subparagraph (2), there may be excluded from consideration:

(A) Employees who have not completed 3 years of service prior to the beginning of the plan year. For purposes of this section years of service may be determined by any method that is reasonable and consistent. A determination made in the same manner as (and not requiring service in excess of how) a year of service is determined under section 410(a)(3) shall be deemed to be reasonable. For purposes of the 3-year rule, all of an employee's years of service with the employer prior to a separation from service are not taken into account. For purposes of the 3-year rule, an employee's years of service prior to age 25, as a part-time or seasonal employee, as a member of a collective bargaining unit, or as a nonresident alien, as each is described in this subdivision, are not excluded by reason of being so described from counting towards satisfaction of the rule. In addition, if the employer is a predecessor employer (determined in a manner consistent with section 414(a)), service for such predecessor is treated as service for the employer.

(B) Employees who have not attained age 25 prior to the beginning of the plan year.

(C) Part-time employees whose customary weekly employment is less than 35 hours, if other employees in similar work with the same employer (or, if no employees of the employer are in similar work, in similar work in the same industry and location) have substantially more hours, and seasonal employees whose customary annual employment is less than 9 months, if other employees in similar work with the same employer (or, if no employees of the employer are in similar work, in similar work in the same industry and location) have substantially more months. Notwithstanding the preceding sentence, any employee whose customary weekly employment is less than 25 hours or any employee whose customary annual employment is less than 7 months may be considered as a part-time or seasonal employee.

(D) Employees who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Commissioner finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers. For purposes of determining whether such bargaining occurred, it is not material that such employees are not covered by another medical plan or that the plan was not considered in such bargaining.

(E) Employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(b) and the regulations thereunder) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3) and the regulations thereunder).

(3) *Nondiscriminatory benefits*—(i) *In general.* In general, benefits subject to reimbursement under a plan must not discriminate in favor of highly compensated individuals. Plan benefits will not satisfy the requirements of this subparagraph unless all the benefits provided for participants who are highly compensated individuals are provided for all other participants. In addition, all the benefits available for the dependents of employees who are highly compensated individuals must also be available on the same basis for the dependents of all other employees who are participants. A plan that provides optional benefits to participants will be treated as providing a single benefit with respect to the benefits covered by the option provided that (A) all eligible participants may elect any of the benefits covered by the option and (B) there are either no required employee contributions or the required employee contributions are the same amount. This test is applied to the benefits subject to reimbursement under the plan rather than the actual benefit payments or claims under the plan. The presence or absence of such discrimination will be determined by considering the type of benefit subject to reimbursement provided highly compensated individuals, as well as the amount of the benefit subject to reimbursement. A plan may establish a maximum limit for the amount of reimbursement which may be paid a participant for any single benefit, or combination of benefits. However, any maximum limit attributable to employer contributions must be uniform for all participants and for all dependents of employees who are participants and may not be modified by reason of a participant's age or years of service. In addition, if a plan covers employees

who are highly compensated individuals, and the type or the amount of benefits subject to reimbursement under the plan are in proportion to employee compensation, the plan discriminates as to benefits.

(ii) *Discriminatory operation*. Not only must a plan not discriminate on its face in providing benefits in favor of highly compensated individuals, the plan also must not discriminate in favor of such employees in actual operation. The determination of whether plan benefits discriminate in operation in favor of highly compensated individuals is made on the basis of the facts and circumstances of each case. A plan is not considered discriminatory merely because highly compensated individuals participating in the plan utilize a broad range of plan benefits to a greater extent than do other employees participating in the plan. In addition, if a plan (or a particular benefit provided by a plan) is terminated, the termination would cause the plan benefits to be discriminatory if the duration of the plan (or benefit) has the effect of discriminating in favor of highly compensated individuals. Accordingly, the prohibited discrimination may occur where the duration of a particular benefit coincides with the period during which a highly compensated individual utilizes the benefit.

(iii) *Retired employees*. To the extent that an employer provides benefits under a self-insured medical reimbursement plan to a retired employee that would otherwise be excludible from gross income under section 105(b), determined without regard to section 105(h), such benefits shall not be considered a discriminatory benefit under this paragraph (c). The preceding sentence shall not apply to a retired employee who was a highly compensated individual unless the type, and the dollar limitations, of benefits provided retired employees who were highly compensated individuals are the same for all other retired participants. If this subdivision applies to a retired participant, that individual is not considered an employee for purposes of determining the highest paid 25 percent of all employees under paragraph (d) of this section solely by reason of receiving such plan benefits.

(4) *Multiple plans, etc.*—(i) *General rule*. An employer may designate two or more plans as constituting a single plan that is intended to satisfy the requirements of section 105(h)(2) and paragraph (c) of this section, in which case all plans so designated shall be considered as a single plan in determining whether the requirements of such section are satisfied by each of the separate plans. A determination that the combination of plans so designated does not satisfy such requirements does not preclude a determination that one or more of such plans, considered separately, satisfies such requirements. A single plan document may be utilized by an employer for two or more separate plans provided that the employer designates the plans that are to be considered separately and the applicable provisions of each separate plan.

(ii) *Other rules*. If the designated combined plan discriminates as to eligibility to participate or benefits, the amount of excess reimbursement will be determined under the rules of section 105(h)(7) and paragraph (e) of this section by taking into account all reimbursements made under the combined plan.

(iii) *H.M.O. participants*. For purposes of section 105(h)(2)(A) and paragraph (c)(2) of this section, a self-insured plan will be deemed to benefit an employee who has enrolled in a health maintenance organization (HMO) that is offered on an optional basis by the employer in lieu of coverage under the self-insured plan if, with respect to that employee, the employer's contributions to the HMO plan equal or exceed those that would be made to the self-insured plan, and if the HMO plan is designated in accordance with subdivision (i) with the self-insured plan as a single plan. For purposes of section 105(h) and this section, except as provided in the preceding sentence, employees covered by, and benefits under, the HMO plan are not treated as part of the self-insured plan.

(d) *Highly compensated individuals defined*. For purposes of section 105(h) and this section, the term ''highly compensated individual'' means an individual who is—

(1) One of the 5 highest paid officers,

(2) A shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or

(3) Among the highest paid 25 percent of all employees (including the 5 highest paid officers, but not including employees excludable under paragraph (c)(2)(iii) of this section who are not participants in any self-insured medical reimbursement plan of the employer, whether or not designated as a single plan under paragraph (c)(4) of this section, or in a health maintenance organization plan).

The status of an employee as an officer or stockholder is determined with respect to a particular benefit on the basis of the employee's officer status or stock ownership at the time during the plan year at which the benefit is provided. In calculating the highest paid 25 percent of all employees, the number of employees included will be rounded to the next highest number. For example, if there are 5 employees, the top two are in the highest paid 25 percent. The level of an employee's compensation is determined on the basis of the employee's compensation for the plan year. For purposes of the preceding sentence, fiscal year plans may determine employee compensation on the basis of the calendar year ending within the plan year.

(e) *Excess reimbursement of highly compensated individual*—(1) *In general.* For purposes of section 105(h) and this section, a reimbursement paid to a highly compensated individual is an excess reimbursement if it is paid pursuant to a plan that fails to satisfy the requirements of paragraph (c)(2) or (c)(3) for the plan year. The amount reimbursed to a highly compensated individual which constitutes an excess reimbursement is not excludable from such individual's gross income under section 105(b).

(2) *Discriminatory benefit.* In the case of a benefit available to highly compensated individuals but not to all other participants (or which otherwise discriminates in favor of highly compensated individuals as opposed to other participants), the amount of excess reimbursement equals the total amount reimbursed to the highly compensated individual with respect to the benefit.

(3) *Discriminatory coverage.* In the case of benefits (other than discriminatory benefits described in subparagraph (2)) paid to a highly compensated individual under a plan which fails to satisfy the requirements of paragraph (c)(2) relating to nondiscrimination in eligibility to participate, the amount of excess reimbursement is determined by multiplying the total amount reimbursed to the individual by a fraction. The numerator of the fraction is the total amount reimbursed during that plan year to all highly compensated individuals. The denominator of the fraction is the total amount reimbursed during that plan year to all participants. In computing the fraction and the total amount reimbursed to the individual, discriminatory benefits described in subparagraph (2) are not taken into account. Accordingly, any amount which is included in income by reason of the benefit's not being available to all other participants will not be taken into account.

(4) *Examples.* The provisions of this paragraph are illustrated by the following examples:

*Example 1.* Corporation M maintains a self-insured medical reimbursement plan which covers all employees. The plan provides the following maximum limits on the amount of benefits subject to reimbursement: $5,000 for officers and $1,000 for all other participants. During a plan year Employee A, one of the 5 highest paid officers, received reimbursements in the amount of $4,000. Because the amount of benefits provided for highly compensated individuals is not provided for all other participants, the plan benefits are discriminatory. Accordingly, Employee A received an excess reimbursement of $3,000 ($4,000 − $1,000) which constitutes a benefit available to highly compensated individuals, but not to all other participants.

*Example 2.* Corporation N maintains a self-insured medical reimbursement plan which covers all employees. The plan provides a broad range of medical benefits subject to reimbursement for all participants. However, only the 5 highest paid officers are entitled to dental benefits. During the plan year Employee B, one of the 5 highest paid officers, received dental payments under the plan in the amount of $300. Because dental benefits are provided for highly compensated individuals, and not for all other participants, the plan discriminates as to benefits. Accordingly, Employee B received an excess reimbursement in the amount of $300.

*Example 3.* Corporation O maintains a self-insured medical reimbursement plan which discriminates as to eligibility by covering only the highest paid 40% of all employees. Benefits subject to reimbursement under the plan are the same for all participants. During a plan year Employee C, a highly compensated individual, received benefits in the amount of $1,000. The amount of excess reimbursement paid Employee C during the plan year will be calculated by multiplying the $1,000 by a fraction determined under subparagraph (3).

*Example 4.* Corporation P maintains a self-insured medical reimbursement plan for its employees. Benefits subject to reimbursement under the plan are the same for all plan participants. However, the plan fails the eligibility tests of section 105(h)(3)(A) and thereby discriminates as to eligibility. During the 1980 plan year Employee D, a highly compensated individual, was hospitalized for surgery and incurred medical expenses of $4,500 which were reimbursed to D under the plan. During that plan year the Corporation P medical plan paid $50,000 in benefits under the plan, $30,000 of which constituted benefits paid to highly compensated individuals. The amount of excess reimbursement not excludable by D under section 105(b) is $2,700:

$$\$4500 \times \frac{\$30{,}000}{\$50{,}000}$$

*Example 5.* Corporation Q maintains a self-insured medical reimbursement plan for its employees. The plan provides a broad range of medical benefits subject to reimbursement for participants. However, only the five highest paid officers are entitled to dental benefits. In addition, the plan fails the eligibility test of section 105(h)(3)(A) and thereby discriminates as to eligibility. During the calendar 1981 plan year, Employee E, a highly compensated individual, received dental benefits under the plan in the amount of $300, and no other employee received dental benefits. In addition, Employee E was hospitalized for surgery and incurred medical expenses, reimbursement for which was available to all participants, of $4,500 which were reimbursed to E under the plan. Because dental benefits are only provided for highly compensated individuals, Employee E received an excess reimbursement under paragraph (e)(2) above in the amount of $300. For the 1981 plan year, the Corporation Q medical plan paid $50,300 in total benefits under the plan, $30,300 of which constituted benefits paid to highly compensated individuals. In computing the fraction under paragraph (e)(3), discriminatory benefits described in paragraph (e)(2) are not taken into account. Therefore, the amount of excess reimbursement not excludable to Employee E with respect to the $4,500 of medical expenses incurred is $2,700:

$$\$4500 \times \frac{\$30{,}000}{\$50{,}000}$$

and the total amount of excess reimbursements includable in E's income for 1981 is $3,000.

*Example 6.* (i) Corporation R maintains a calendar year self-insured medical reimbursement plan which covers all employees. The type of benefits subject to reimbursement under the plan include all medical care expenses as defined in section 213(e). The amount of reimbursement available to any employee for any calendar year is limited to 5 percent of the compensation paid to each employee during the calendar year. The amount of compensation and reimbursement paid to Employees A-F for the calendar year is as follows:

| Employee | Compensation | Reimbursable amount paid |
|---|---|---|
| A | $100,000 | $5,000 |
| B | 25,000 | 1,250 |
| C | 15,000 | 750 |
| D | 10,000 | 500 |
| E | 10,000 | 500 |
| F | 8,000 | 400 |
| | | 8,400 |

(ii) Because the amount of benefits subject to reimbursement under the plan is in proportion to employee compensation the plan discriminates as to benefits. In addition, Employees A and B are highly compensated individuals. The amount of excess reimbursement paid Employees A and B during the plan year will be determined under paragraph (e)(2). Because benefits in excess of $400 (Employee F's maximum benefit) are provided for highly compensated individuals and not for all other participants, Employees A and B received, respectively, an excess reimbursement of $4,600 and $850.

(f) *Certain controlled groups.* For purposes of applying the provisions of section 105(h) and this section, all employees who are treated as employed by a single employer under section 414 (b) and (c), and the regulations thereunder (relating to special rules for qualified pension, profit-sharing and stock bonus plans), shall be treated as employed by a single employer.

(g) *Exception for medical diagnostic procedures*—(1) *In general.* For purposes of applying section 105(h) and this section, reimbursements paid under a plan for medical diagnostic procedures for an employee, but not a dependent, are not considered to be a part of a plan described in this section. The medical diagnostic procedures include routine medical examinations, blood tests, and X-rays. Such procedures do not include expenses incurred for the treatment, cure or testing of a known illness or disability, or treatment or testing for a physical injury, complaint or specific symptom of a bodily malfunction. For example, a routine dental examination with X-rays is a medical diagnostic procedure, but X-rays and treatment for a specific complaint are not. In addition, such procedures do not include any activity undertaken for exercise, fitness, nutrition, recreation, or the general improvement of health unless they are for medical care as defined in section 213(e). The diagnostic procedures must be performed at a facility which provides no services (directly or indirectly) other than medical, and ancillary, services. For purposes of the preceding sentence, physical proximity between a medical facility and nonmedical facilities will not for that reason alone cause the medical facility not to qualify. For example, an employee's annual physical examination conducted at the employee's personal physician's office is not considered a part of the medical reimbursement plan and therefore is not subject to the nondiscrimination requirements. Accordingly, the amount reimbursed may be excludable from the employee's income if the requirements of section 105(b) are satisfied.

(2) *Transportation, etc. expenses.* Transportation expenses primarily for an allowable diagnostic procedure are included within the exception described in this paragraph, but only to the extent they are ordinary and necessary. Transportation undertaken merely for the general improvement of health, or in connection with a vacation, is not within the scope of this exception, nor are any incidental expenses for food or lodging; therefore, amounts reimbursed for such expenses may be excess reimbursements under paragraph (e).

(h) *Time of inclusion.* Excess reimbursments (determined under paragraph (e)) paid to a highly compensated individual for a plan year will be considered as received in the taxable year of the individual in which (or with which) the plan year ends. The particular plan year to which reimbursements relate shall be determined under the plan provisions. In the absence of plan provisions reimbursements shall be attributed to the plan year in which payment is made. For example, under a calendar year plan an excess reimbursement paid to A in 1981 on account of an expense incurred and subject to reimbursement for the 1980 plan year under the terms of the plan will be considered as received in 1980 by A.

(i) *Self-insured contributory plan.* A medical plan subject to this section may provide for employer and employee contributions. See §1.105–1(c). The tax treatment of reimbursements attributable to employee contributions is determined under section 104(a)(3). The tax treatment of reimbursements attributable to employer contributions is determined under section 105. The amount of reimbursements which are attributable to contributions of the employer shall be determined in accordance with §1.105–1(e).

(j) *Effective date.* Section 105(h) and this section are effective for taxable years beginning after December 31, 1979 and for amounts reimbursed after December 31, 1979. In determining plan discrimination and the taxability of excess reimbursements made for a plan year beginning in 1979 and ending in 1980, a plan's eligibility and benefit requirements as well as actual reimbursements made in the plan year during 1979, will not be taken into account. In addition, this section does not apply to expenses which are incurred in 1979 and paid in 1980.

(k) *Special rules*—(1) *Relation to cafeteria plans.* If a self-insured medical reimbursement plan is included in a cafeteria plan as described in section 125, the rules of this section will determine the status of a benefit as a taxable or nontaxable benefit, and the rules of section 125 will determine whether an employee is taxed as though he elected all available taxable benefits (including taxable benefits under a discriminatory medical reimbursement plan). This rule is illustrated by the following example:

*Example.* Corporation M maintains a cafeteria plan described in section 125. Under the plan an officer of the corporation may elect to receive medical benefits provided by a self-insured medical reimbursement plan which is subject to the rules of this section. However, the self-insured medical reimbursement plan fails the nondiscrimination rules under paragraph (c) of this section. Accordingly, the amount of excess reimbursement is taxable to the officer participating in the medical reimbursement plan pursuant to section 105(h) and this section. Therefore, the self-insured medical reimbursement plan will be considered a taxable benefit under section 125 and the regulations thereunder.

(2) *Benefit subject to reimbursement.* For purposes of this section, a benefit subject to reimbursement is a benefit described in the plan under which a claim for reimbursement or for a payment directly to the health service provider may be filed by a plan participant. It does not refer to actual claims or benefit reimbursements paid under a plan.

[T.D. 7754, 46 FR 3505, Jan. 15, 1981]

### § 1.106–1 Contributions by employer to accident and health plans.

(a) The gross income of an employee does not include the contributions that the employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by the employee, the employee's spouse, the employee's dependents (as defined in section 152 determined without regard to section 152(b)(1), (b)(2), or (d)(1)(B)), or any child (as defined in section 152(f)(1)) of the employee who as of the end of the taxable year has not attained age 27. The employer may contribute to an accident or health plan either by paying the premium (or a portion of the premium) on a policy of accident or health insurance covering one or more of his employees, or by contributing to a separate trust or fund (including a fund referred to in section 105(e)) which provides accident or health benefits directly or through insurance to one or more of his employees. However, if such insurance policy, trust, or fund provides other benefits in addition to accident or health benefits, section 106 applies only to the portion of the employer's contribution which is allocable to accident or health benefits. See paragraph (d) of § 1.104–1 and §§ 1.105–1 through 1.105–5, inclusive, for regulations relating to exclusion from an employee's gross income of amounts received through accident or health insurance and through accident or health plans. For the treatment of the payment of premiums for accident or health insurance from a qualified trust under section 401(a), see §§ 1.72–15 and 1.402(a)–1(e).

(b) *Effective/applicability date.* The first and last sentences of paragraph (a) of this section apply for taxable years beginning on or after January 1, 2015.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, as amended by T.D. 9665, 79 FR 26841, May 12, 2014]

### § 1.107–1 Rental value of parsonages.

(a) In the case of a minister of the gospel, gross income does not include (1) the rental value of a home, including utilities, furnished to him as a part of his compensation, or (2) the rental allowance paid to him as part of his compensation to the extent such allowance is used by him to rent or otherwise provide a home. In order to qualify for the exclusion, the home or rental allowance must be provided as remuneration for services which are ordinarily the duties of a minister of the gospel. In general, the rules provided in § 1.1402(c)–5 will be applicable to such determination. Examples of specific services the performance of which will be considered duties of a minister for purposes of section 107 include the performance of sacerdotal functions, the conduct of religious worship, the administration and maintenance of religious organizations and their integral agencies, and the performance of teaching and administrative duties at theological seminaries. Also, the service performed by a qualified minister as an employee of the United States (other than as a chaplain in the Armed Forces, whose service is considered to be that of a commissioned officer in his capacity as such, and not as a minister in the exercise of his ministry), or a State, Territory, or possession of the United States, or a political subdivision of any of the foregoing, or the District of Columbia, is in the exercise of his ministry provided the service performed includes such services as are ordinarily the duties of a minister.

(b) For purposes of section 107, the term ''home'' means a dwelling place (including furnishings) and the appurtenances thereto, such as a garage. The term ''rental allowance'' means an amount paid to a minister to rent or otherwise provide a home if such amount is designated as rental allowance pursuant to official action taken prior to January 1, 1958, by the employing church or other qualified organization, or if such amount is designated as rental allowance pursuant to official action taken in advance of such payment by the employing church or other qualified organization when paid after December 31, 1957. The designation of an amount as rental allowance may be evidenced in an employment contract, in minutes of or in a resolution by a church or other qualified organization or in its budget, or in any other appropriate instrument evidencing such official action. The designation referred to in this paragraph is a sufficient designation if it permits a payment or a part thereof to be identified as a payment of rental allowance as distinguished from salary or other remuneration.

(c) A rental allowance must be included in the minister's gross income in the taxable year in which it is received, to the extent that such allowance is not used by him during such taxable year to rent or otherwise provide a home. Circumstances under which a rental allowance will be deemed to have been used to rent or provide a home will include cases in which the allowance is expended (1) for rent of a home, (2) for purchase of a home, and (3) for expenses directly related to providing a home. Expenses for food and servants are not considered for this purpose to be directly related to providing a home. Where the minister rents, purchases, or owns a farm or other business property in addition to a home, the portion of the rental allowance expended in connection with the farm or business property shall not be excluded from his gross income.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6691, 28 FR 12817, Dec. 3, 1963]

## § 1.108–1 [Reserved]

## § 1.108–2 Acquisition of indebtedness by a person related to the debtor.

(a) *General rules.* The acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor results in the realization by the debtor of income from discharge of indebtedness (to the extent required by section 61(a)(12) and section 108) in an amount determined under paragraph (f) of this section. Income realized pursuant to the preceding sentence is excludible from gross income to the extent provided in section 108(a). The rules of this paragraph apply if indebtedness is acquired directly by a person related to the debtor in a direct acquisition (as defined in paragraph (b) of this section) or if a holder of indebtedness becomes related to the debtor in an indirect acquisition (as defined in paragraph (c) of this section).

(b) *Direct acquisition.* An acquisition of outstanding indebtedness is a direct acquisition under this section if a person related to the debtor (or a person who becomes related to the debtor on the date the indebtedness is acquired) acquires the indebtedness from a person who is not related to the debtor. Notwithstanding the foregoing, the Commissioner may provide by Revenue Procedure or other published guidance that certain acquisitions of indebtedness described in the preceding sentence are not direct acquisitions for purposes of this section.

(c) *Indirect acquisition*—(1) *In general.* An indirect acquisition is a transaction in which a holder of outstanding indebtedness becomes related to the debtor, if the holder acquired the indebtedness in anticipation of becoming related to the debtor.

(2) *Proof of anticipation of relationship.* In determining whether indebtedness was acquired by a holder in anticipation of becoming related to the debtor, all relevant facts and circumstances will be considered. Such facts and circumstances include, but are not limited to, the intent of the parties at the time of the acquisition, the nature of any contacts between the parties (or their respective affiliates) before the acquisition, the period of time for

which the holder held the indebtedness, and the significance of the indebtedness in proportion to the total assets of the holder group (as defined in paragraph (c)(5) of this section). For example, if a holder acquired the indebtedness in the ordinary course of its portfolio investment activities and the holder's acquisition of the indebtedness preceded any discussions concerning the acquisition of the holder by the debtor (or by a person related to the debtor) or the acquisition of the debtor by the holder (or by a person related to the holder), as the case may be, these facts, taken together, would ordinarily establish that the holder did not acquire the indebtedness in anticipation of becoming related to the debtor. The absence of discussions between the debtor and the holder (or their respective affiliates), however, does not by itself establish that the holder did not acquire the indebtedness in anticipation of becoming related to the debtor (if, for example, the facts and circumstances show that the holder was considering a potential acquisition of or by the debtor, or the relationship is created within a relatively short period of time of the acquisition, or the indebtedness constitutes a disproportionate portion of the holder group's assets).

(3) *Indebtedness acquired within 6 months of becoming related.* Notwithstanding any other provision of this paragraph (c), a holder of indebtedness is treated as having acquired the indebtedness in anticipation of becoming related to the debtor if the holder acquired the indebtedness less than 6 months before the date the holder becomes related to the debtor.

(4) *Disclosure of potential indirect acquisition*—(i) *In general.* If a holder of outstanding indebtedness becomes related to the debtor under the circumstances described in paragraph (c)(4)(ii) or (iii) of this section, the debtor is required to attach the statement described in paragraph (c)(4)(iv) of this section to its tax return (or to a qualified amended return within the meaning of §1.6664–2(c)(3)) for the taxable year in which the debtor becomes related to the holder, unless the debtor reports its income on the basis that the holder acquired the indebtedness in anticipation of becoming related to the debtor. Disclosure under this paragraph (c)(4) is in addition to, and is not in substitution for, any disclosure required to be made under section 6662, 6664 or 6694.

(ii) *Indebtedness represents more than 25 percent of holder group's assets*—(A) *In general.* Disclosure under this paragraph (c)(4) is required if, on the date the holder becomes related to the debtor, indebtedness of the debtor represents more than 25 percent of the fair market value of the total gross assets of the holder group (as defined in paragraph (c)(5) of this section).

(B) *Determination of total gross assets.* In determining the total gross assets of the holder group, total gross assets do not include any cash, cash item, marketable stock or security, short-term indebtedness, option, futures contract, notional principal contract, or similar item (other than indebtedness of the debtor), nor do total gross assets include any asset in which the holder has substantially reduced its risk of loss. In addition, total gross assets do not include any ownership interest in or indebtedness of a member of the holder group.

(iii) *Indebtedness acquired within 6 to 24 months of becoming related.* Disclosure under this paragraph (c)(4) is required if the holder acquired the indebtedness 6 months or more before the date the holder becomes related to the debtor, but less than 24 months before that date.

(iv) *Contents of statement.* A statement under this paragraph (c)(4) must include the following—

(A) A caption identifying the statement as disclosure under §1.108–2(c);

(B) An identification of the indebtedness with respect to which disclosure is made;

(C) The amount of such indebtedness and the amount of income from discharge of indebtedness is section 108(e)(4) were to apply;

(D) Whether paragraph (c)(4)(ii) or (iii) of this section applies to the transaction; and

(E) A statement describing the facts and circumstances supporting the debtor's position that the holder did not acquire the indebtedness in anticipation of becoming related to the debtor.

(v) *Failure to disclose.* In addition to any other penalties that may apply, if a debtor fails to provide a statement required by this paragraph (c)(4), the holder is presumed to have acquired the indebtedness in anticipation of becoming related to the debtor unless the facts and circumstances clearly established that the holder did not acquire the indebtedness in anticipation of becoming related to the debtor.

(5) *Holder group.* For purposes of this paragraph (c), the holder group consists of the holder of the indebtedness and all persons who are both—

(i) Related to the holder before the holder becomes related to the debtor; and

(ii) Related to the debtor after the holder becomes related to the debtor.

(6) *Holding period*—(i) *Suspensions.* The running of the holding periods set forth in paragraphs (c)(3) and (c)(4)(iii) of this section is suspended during any period in which the holder or any person related to the holder is protected (directly or indirectly) against risk of loss by an option, a short sale, or any other device or transaction.

(ii) *Tacking.* For purposes of paragraphs (c)(3) and (c)(4)(iii) of this section, the period for which a holder held the debtor's indebtedness includes—

(A) The period for which the indebtedness was held by a corporation to whose attributes the holder succeeded pursuant to section 381; and

(B) The period (ending on the date on which the holder becomes related to the debtor) for which the indebtedness was held continuously by members of the holder group (as defined in paragraph (c)(5) of this section).

(d) *Definitions*—(1) *Acquisition date.* For purposes of this section, the acquisition date is the date on which a direct acquisition of indebtedness or an indirect acquisition of indebtedness occurs.

(2) *Relationship.* For purposes of this section, persons are considered related if they are related within the meaning of sections 267(b) or 707(b)(1). However—

(i) Sections 267(b) and 707(b)(1) are applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren; and

(ii) Two entities that are treated as a single employer under subsection (b) or (c) of section 414 are treated as having a relationship to each other that is described in section 267(b).

(e) *Exceptions*—(1) *Indebtedness retired within one year.* This section does not apply to a direct or indirect acquisition of indebtedness with a stated maturity date on or before the date that is one year after the acquisition date, if the indebtedness is, in fact, retired on or before its stated maturity date.

(2) *Acquisitions by securities dealers.* (i) This section does not apply to a direct acquisition or an indirect acquisition of indebtedness by a dealer that acquires and disposes of such indebtedness in the ordinary course of its business of dealing in securities if—

(A) The dealer accounts for the indebtedness as a security held primarily for sale to customers in the ordinary course of business;

(B) The dealer disposes of the indebtedness (or it matures while held by the dealer) within a period consistent with the holding of the indebtedness for sale to customers in the ordinary course of business, taking into account the terms of the indebtedness and the conditions and practices prevailing in the markets for similar indebtedness during the period in which it is held; and

(C) The dealer does not sell or otherwise transfer the indebtedness to a person related to the debtor (other than in a sale to a dealer that in turn meets the requirements of this paragraph (e)(2)).

(ii) A dealer will continue to satisfy the conditions of this paragraph (e)(2) with respect to indebtedness that is exchanged for successor indebtedness in a transaction in which unrelated holders also exchange indebtedness of the same issue, provided that the conditions of this paragraph (e)(2) are met with respect to the successor indebtedness.

(iii) For purposes of this paragraph (e)(2), if the period consistent with the holding of indebtedness for sale to customers in the ordinary course of business is 30 days or less, the dealer is considered to dispose of indebtedness within that period if the aggregate principal amount of indebtedness of that issue sold by the dealer to customers in the ordinary course of business (or that mature and are paid while held by the dealer) in the calendar month following the month in which the indebtedness is acquired equals or exceeds the aggregate principal amount of indebtedness of that issue held in the dealer's inventory at the close of the month in which the indebtedness is acquired. If the period consistent with the holding of indebtedness for sale to customers in the ordinary course of business is greater than 30 days, the dealer is considered to dispose of the indebtedness within that period if the aggregate principal amount of indebtedness of that issue sold by the dealer to customers in the ordinary course of business (or that mature and are paid while held by the dealer) within that period equals or exceeds the aggregate principal amount of indebtedness of that issue held in inventory at the close of the day on which the indebtedness was acquired.

(f) *Amount of discharge of indebtedness income realized*—(1) *Holder acquired the indebtedness by purchase on or less than six months before the acquisition date.* Except as otherwise provided in this paragraph (f), the amount of discharge of indebtedness income realized under paragraph (a) of this section is measured by reference to the adjusted basis of the related holder (or of the holder that becomes related to the debtor) in the indebtedness on the acquisition date if the holder acquired the indebtedness by purchase on or less than six months before the acquisition date. For purposes of this paragraph (f), indebtedness is acquired "by purchase" if the indebtedness in the hands of the holder is not substituted basis property within the meaning of section 7701(a)(42). However, indebtedness is also considered acquired by purchase within six months before the acquisition date if the holder acquired the indebtedness as transferred basis property (within the meaning of section 7701(a)(43)) from a person who acquired the indebtedness by purchase on or less than six months before the acquisition date.

(2) *Holder did not acquire the indebtedness by purchase on or less than six months before the acquisition date.* Except as otherwise provided in this paragraph (f), the amount of discharge of indebtedness income realized under paragraph (a) of this section is measured by reference to the fair market value of the indebtedness on the acquisition date if the holder (or the transferor to the holder in a transferred basis transaction) did not acquire the indebtedness by purchase on or less than six months before the acquisition date.

(3) *Acquisitions of indebtedness in nonrecognition transactions.* [Reserved]

(4) *Avoidance transactions.* The amount of discharge of indebtedness income realized by the debtor under paragraph (a) of this section is measured by reference to the fair market value of the indebtedness on the acquisition date if the indebtedness is acquired in a direct or an indirect acquisition in which a principal purpose for the acquisition is the avoidance of federal income tax.

(g) *Correlative adjustments*—(1) *Deemed issuance.* For income tax purposes, if a debtor realizes income from discharge of its indebtedness in a direct or an indirect acquisition under this section (whether or not the income is excludible under section 108(a)), the debtor's indebtedness is treated as new indebtedness issued by the debtor to the related holder on the acquisition date (the deemed issuance). The new indebtedness is deemed issued with an issue price equal to the amount used under paragraph (f) of this section to compute the amount realized by the debtor under paragraph (a) of this section (*i.e.*, either the holder's adjusted basis or the fair market value of the indebtedness, as the case may be). Under section 1273(a)(1), the excess of the stated redemption price at maturity (as defined in section 1273(a)(2)) of the indebtedness over its issue price is original issue discount (OID) which, to the extent provided in sections 163 and 1272, is deductible by the debtor and includible in the gross income of the related holder. Notwithstanding the foregoing, the Commissioner may provide by Revenue Procedure or other published guidance that the indebtedness is not treated as newly issued indebtedness for purposes of designated provisions of the income tax laws.

(2) *Treatment of related holder*. The related holder does not recognize any gain or loss on the deemed issuance described in paragraph (g)(1) of this section. The related holder's adjusted basis in the indebtedness remains the same as it was immediately before the deemed issuance. The deemed issuance is treated as a purchase of the indebtedness by the related holder for purposes of section 1272(a)(7) (pertaining to reduction of original issue discount where a subsequent holder pays acquisition premium) and section 1276 (pertaining to acquisitions of debt at a market discount).

(3) *Loss deferral on disposition of indebtedness acquired in certain exchanges*. (i) Any loss otherwise allowable to a related holder on the disposition at any time of indebtedness acquired in a direct or indirect acquisition (whether or not any discharge of indebtedness income was realized under paragraph (a) of this section) is deferred until the date the debtor retires the indebtedness if—

(A) The related holder acquired the debtor's indebtedness in exchange for its own indebtedness; and

(B) The issue price of the related holder's indebtedness was not determined by reference to its fair market value (e.g., the issue price was determined under section 1273(b)(4) or 1274(a) or any other provision of applicable law).

(ii) Any comparable tax benefit that would otherwise be available to the holder, debtor, or any person related to either, in any other transaction that directly or indirectly results in the disposition of the indebtedness is also deferred until the date the debtor retires the indebtedness.

(4) *Examples*. The following examples illustrate the application of this paragraph (g). In each example, all taxpayers are calendar-year taxpayers, no taxpayer is insolvent or under the jurisdiction of a court in a title 11 case and no indebtedness is qualified farm indebtedness described in section 108(g).

*Example 1*. (i) P, a domestic corporation, owns 70 percent of the single class of stock of S, a domestic corporation. S has outstanding indebtedness that has an issue price of $10,000,000 and provides for monthly interest payments of $80,000 payable at the end of each month and a payment at maturity of $10,000,000. The indebtedness has a stated maturity date of December 31, 1994. On January 1, 1992, P purchases S's indebtedness from I, an individual not related to S within the meaning of paragraph (d)(2) of this section, for cash in the amount of $9,000,000. S repays the indebtedness in full at maturity.

(ii) Under section 61(a)(12), section 108(e)(4), and paragraphs (a) and (f) of this section, S realizes $1,000,000 of income from discharge of indebtedness on January 1, 1992.

(iii) Under paragraph (g)(1) of this section, the indebtedness is treated as issued to P on January 1, 1992, with an issue price of $9,000,000. Under section 1273(a), the $1,000,000 excess of the stated redemption price at maturity of the indebtedness ($10,000,000) over its issue price ($9,000,000) is original issue discount, which is includible in gross income by P and deductible by S over the remaining term of the indebtedness under sections 163(e) and 1272(a).

(iv) Accordingly, S deducts and P includes in income original issue discount, in addition to stated interest, as follows: in 1992, $289,144.88; in 1993, $331,286.06; and in 1994, $379,569.06.

*Example 2*. The facts are the same as in *Example 1*, except that on January 1, 1992, P sells S's indebtedness to J, who is not related to S within the meaning of paragraph (d)(2) of this section, for $9,400,000 in cash. J holds S's indebtedness to maturity. On January 1, 1993, P's adjusted basis in S's indebtedness is $9,289,144.88. Accordingly, P realizes gain in the amount of $110,855.12 upon the disposition. S and J continue to deduct and include the original issue discount on the indebtedness in accordance with *Example 1*. The amount of original issue discount includible by J is reduced by the $110,855.12 acquisition premium as provided in section 1272(a)(7).

*Example 3*. The facts are the same as in *Example 1*, except that on February 1, 1992 (one month after P purchased S's indebtedness), S retires the indebtedness for an amount of cash equal to the fair market value of the indebtedness. Assume that the fair market value of the indebtedness is $9,022,621.41, which in this case equals the issue price of indebtedness determined under paragraph (g)(1) of this section ($9,000,000) plus the accrued original issue discount through February 1 ($22,621.41). Section 1.61–12(c)(3) provides that if indebtedness is repurchased for a price that is exceeded by the issue price of the indebtedness plus the amount of discount already deducted, the excess is income from discharge of indebtedness. Therefore, S does not realize income from discharge of indebtedness. The result would be the same if P had contributed the indebtedness to the capital of S. Under section 108(e)(6), S would be treated as having satisfied the indebtedness with an amount of money equal to P's adjusted basis and, under section 1272(d)(2), P's adjusted basis is equal to $9,022,621.41.

*Example 4.* (i) P, a domestic corporation, owns 70 percent of the single class of stock of S, a domestic corporation. On January 1, 1986, P issued indebtedness that has an issue price of $5,000,000 and provides for no stated interest payments and a payment at maturity of $10,000,000. The indebtedness has a stated maturity date of December 31, 1995. On January 1, 1992, S purchases P's indebtedness from K, a partnership not related to P within the meaning of paragraph (d)(2) of this section, for cash in the amount of $6,000,000. The sum of the debt's issue price and previously deducted original issue discount is $7,578,582.83. P repays the indebtedness in full at maturity.

(ii) Under section 61(a)(12), section 108(e)(4), and paragraphs (a) and (f) of this section, P realizes $1,578,582.83 in income from discharge of indebtedness ($7,578,582.83 minus $6,000,000) on January 1, 1992.

(iii) Under paragraph (g)(1) of this section, the indebtedness is treated as issued to S on January 1, 1992, with an issue price of $6,000,000. Under section 1273(a), the $4,000,000 excess of the stated redemption price at maturity of the indebtedness ($10,000,000) over its issue price ($6,000,000) is orignial issue discount, which is includible in gross income by S and deductible by P over the remaining term of the indebtedness under sections 163(e) and 1272(a).

(iv) Accordingly, P deducts and S includes in income original issue discount as follows: in 1992, $817,316.20; in 1993, $928,650.49; in 1994, $1,055,150.67; and in 1995, $1,198,882.64.

(h) *Effective date.* This section applies to any transaction described in paragraph (a) and in either paragraph (b) or (c) of this section with an acquisition date on or after March 21, 1991. Although this section does not apply to direct or indirect acquisitions occurring before March 21, 1991, section 108(e)(4) is effective for any transaction after December 31, 1980, subject to the rules of section 7 of the Bankruptcy Tax Act of 1980 (Pub. L. 96–589, 94 Stat. 3389, 3411). Taxpayers may use any reasonable method of determining the amount of discharge of indebtedness income realized and the treatment of correlative adjustments under section 108(e)(4) for acquisitions of indebtedness before March 21, 1991, if such method is applied consistently by both the debtor and related holder.

[T.D. 8460, 57 FR 61808, Dec. 29, 1992]

## § 1.108–3 Intercompany losses and deductions.

(a) *General rule.* This section applies to certain losses and deductions from the sale, exchange, or other transfer of property between corporations that are members of a consolidated group or a controlled group (an intercompany transaction). See section 267(f) (controlled groups) and § 1.1502–13 (consolidated groups) for applicable definitions. For purposes of determining the attributes to which section 108(b) applies, a loss or deduction not yet taken into account under section 267(f) or § 1.1502–13 (an intercompany loss or deduction) is treated as basis described in section 108(b) that the transferor retains in property. To the extent a loss not yet taken into account is reduced under this section, it cannot subsequently be taken into account under section 267(f) or § 1.1502–13. For example, if S and B are corporations filing a consolidated return, and S sells land with a $100 basis to B for $90 and the $10 loss is deferred under section 267(f) and § 1.1502–13, the deferred loss is treated for purposes of section 108(b) as $10 of basis that S has in land (even though S has no remaining interest in the land sold to B) and is subject to reduction under section 108(b)(2)(E). Similar principles apply, with appropriate adjustments, if S and B are members of a controlled group and S's loss is deferred only under section 267(f).

(b) *Effective date.* This section applies with respect to discharges of indebtedness occurring on or after September 11, 1995.

[T.D. 8597, 60 FR 36680, July 18, 1995]

## § 1.108–4 Election to reduce basis of depreciable property under section 108(b)(5) of the Internal Revenue Code .

(a) *Description.* An election under section 108(b)(5) is available whenever a taxpayer excludes discharge of indebtedness income (COD income) from gross income under sections 108(a)(1)(A), (B), or (C) (concerning title 11 cases, insolvency, and qualified farm indebtedness, respectively). See sections 108(d)(2) and (3) for the definitions of *title 11 case* and *insolvent.* See section 108(g)(2) for the definition of *qualified farm indebtedness.*

(b) *Time and manner.* To make an election under section 108(b)(5), a taxpayer must enter the appropriate information on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, and attach the form to the timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). An election under this section may be revoked only with the consent of the Commissioner.

(c) *Effective date.* This section applies to elections concerning discharges of indebtedness occurring on or after October 22, 1998.

[T.D. 8787, 63 FR 56562, Oct. 22, 1998]

### § 1.108–5 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 108(c)(3)(C), as added by section 13150 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 446), allows certain noncorporate taxpayers to elect to treat certain indebtedness described in section 108(c)(3) that is discharged after December 31, 1992, as qualified real property business indebtedness. This discharged indebtedness is excluded from gross income to the extent allowed by section 108.

(b) *Time and manner for making election.* The election described in this section must be made on the timely-filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludible from gross income under section 108(a). The election is to be made on a completed Form 982, in accordance with that Form and its instructions.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Effective date.* The rules set forth in this section are effective December 27, 1993.

[T.D. 8688, 61 FR 65322, Dec. 12, 1996. Redesignated by T.D. 8787, 63 FR 56563, Oct. 22, 1998]

### § 1.108–6 Limitations on the exclusion of income from the discharge of qualified real property business indebtedness.

(a) *Indebtedness in excess of value.* With respect to any qualified real property business indebtedness that is discharged, the amount excluded from gross income under section 108(a)(1)(D) (concerning discharges of qualified real property business indebtedness) shall not exceed the excess, if any, of the outstanding principal amount of that indebtedness immediately before the discharge over the net fair market value of the qualifying real property, as defined in §1.1017–1(c)(1), immediately before the discharge. For purposes of this section, *net fair market value* means the fair market value of the qualifying real property (notwithstanding section 7701(g)), reduced by the outstanding principal amount of any qualified real property business indebtedness (other than the discharged indebtedness) that is secured by such property immediately before and after the discharge. Also, for purposes of section 108(c)(2)(A) and this section, outstanding principal amount means the principal amount of indebtedness together with all additional amounts owed that, immediately before the discharge, are equivalent to principal, in that interest on such amounts would accrue and compound in the future, except that outstanding principal amount shall not include amounts that are subject to section 108(e)(2) and shall be adjusted to account for unamortized premium and discount consistent with section 108(e)(3).

(b) *Overall limitation.* The amount excluded from gross income under section 108(a)(1)(D) shall not exceed the aggregate adjusted bases of all depreciable real property held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of the discharge) reduced by the sum of any—

(1) Depreciation claimed for the taxable year the taxpayer excluded discharge of indebtedness from gross income under section 108(a)(1)(D); and

(2) Reductions to the adjusted bases of depreciable real property required under section 108(b) or section 108(g) for the same taxable year.

(c) *Effective date.* This section applies to discharges of qualified real property business indebtedness occurring on or after October 22, 1998.

[T.D. 8787, 63 FR 56563, Oct. 22, 1998]

## § 1.108–7 Reduction of attributes.

(a) *In general.* (1) If a taxpayer excludes discharge of indebtedness income (COD income) from gross income under section 108(a)(1)(A), (B), or (C), then the amount excluded shall be applied to reduce the following tax attributes of the taxpayer in the following order:

(i) Net operating losses.

(ii) General business credits.

(iii) Minimum tax credits.

(iv) Capital loss carryovers.

(v) Basis of property.

(vi) Passive activity loss and credit carryovers.

(vii) Foreign tax credit carryovers.

(2) The taxpayer may elect under section 108(b)(5), however, to apply any portion of the excluded COD income to reduce first the basis of depreciable property. To the extent the excluded COD income is not so applied, the taxpayer must then reduce any remaining tax attributes in the order specified in section 108(b)(2). If the excluded COD income exceeds the sum of the taxpayer's tax attributes, the excess is permanently excluded from the taxpayer's gross income. For rules relating to basis reductions required by sections 108(b)(2)(E) and 108(b)(5), *see* sections 1017 and 1.1017–1. For rules relating to the time and manner for making an election under section 108(b)(5), *see* § 1.108–4.

(b) *Carryovers and carrybacks.* The tax attributes subject to reduction under section 108(b)(2) and paragraph (a)(1) of this section that are carryovers to the taxable year of the discharge, or that may be carried back to taxable years preceding the year of the discharge, are taken into account by the taxpayer for the taxable year of the discharge or the preceding years, as the case may be, before such attributes are reduced pursuant to section 108(b)(2) and paragraph (a)(1) of this section.

(c) *Transactions to which section 381 applies.* If a taxpayer realizes COD income that is excluded from gross income under section 108(a) either during or after a taxable year in which the taxpayer is the distributor or transferor of assets in a transaction described in section 381(a), any tax attributes to which the acquiring corporation succeeds, including the basis of property acquired by the acquiring corporation in the transaction, must reflect the reductions required by section 108(b). For this purpose, all attributes listed in section 108(b)(2) immediately prior to the transaction described in section 381(a), but after the determination of tax for the year of the distribution or transfer of assets, including basis of property, will be available for reduction under section 108(b)(2). However, the basis of stock or securities of the acquiring corporation, if any, received by the taxpayer in exchange for the transferred assets shall not be available for reduction under section 108(b)(2).

(d) *Special rules for S corporations*—(1) *In general.* If an S corporation excludes COD income from gross income under section 108(a)(1)(A), (B), or (C), the amount excluded shall be applied to reduce the S corporation's tax attributes under paragraph (a)(1) of this section. For purposes of paragraph (a)(1)(i) of this section, the aggregate amount of the shareholders' losses or deductions that are disallowed for the taxable year of the discharge under section 1366(d)(1), including disallowed losses or deductions of a shareholder that transfers all of the shareholder's stock in the S corporation during the taxable year of the discharge, is treated as the net operating loss tax attribute (deemed NOL) of the S corporation for the taxable year of the discharge.

(2) *Allocation of excess losses or deductions*—(i) *In general.* If the amount of an S corporation's deemed NOL exceeds the amount of the S corporation's COD income that is excluded from gross income under section 108(a)(1)(A), (B), or (C), the excess deemed NOL shall be allocated to the shareholder or shareholders of the S corporation as a loss or deduction that is disallowed under section 1366(d) for the taxable year of the discharge.

(ii) *Multiple shareholders*—(A) *In general.* If an S corporation has multiple shareholders, to determine the amount of the S corporation's excess deemed

NOL to be allocated to each shareholder under paragraph (d)(2)(i) of this section, calculate with respect to each shareholder the shareholder's excess amount. The shareholder's excess amount is the amount (if any) by which the shareholder's losses or deductions disallowed under section 1366(d)(1) (before any reduction under paragraph (a)(1) of this section) exceed the amount of COD income that would have been taken into account by that shareholder under section 1366(a) had the COD income not been excluded under section 108(a).

(B) *Shareholders with a shareholder's excess amount.* Each shareholder that has a shareholder's excess amount, as determined under paragraph (d)(2)(ii)(A) of this section, is allocated an amount equal to the S corporation's excess deemed NOL multiplied by a fraction, the numerator of which is the shareholder's excess amount and the denominator of which is the sum of all shareholders' excess amounts.

(C) *Shareholders with no shareholder's excess amount.* If a shareholder does not have a shareholder's excess amount as determined in paragraph (d)(2)(ii)(A) of this section, none of the S corporation's excess deemed NOL shall be allocated to that shareholder.

(iii) *Terminating shareholder.* Any amount of the S corporation's excess deemed NOL allocated under paragraph (d)(2) of this section to a shareholder that had transferred all of the shareholder's stock in the corporation during the taxable year of the discharge is permanently disallowed under §1.1366–2(a)(6), unless the transfer of stock is described in section 1041(a). If the transfer of stock is described in section 1041(a), the amount of the S corporation's excess deemed NOL allocated to the transferor under paragraph (d)(2) of this section shall be treated as a loss or deduction incurred by the corporation in the succeeding taxable year with respect to the transferee. *See* section 1366(d)(2)(B).

(3) *Character of excess losses or deductions allocated to a shareholder.* The character of an S corporation's excess deemed NOL that is allocated to a shareholder under paragraph (d)(2) of this section consists of a proportionate amount of each item of the shareholder's loss or deduction that is disallowed for the taxable year of the discharge under section 1366(d)(1).

(4) *Information requirements.* If an S corporation excludes COD income from gross income under section 108(a) for a taxable year, each shareholder of the S corporation during the taxable year of the discharge must report to the S corporation the amount of the shareholder's losses and deductions that are disallowed for the taxable year of the discharge under section 1366(d)(1), even if that amount is zero. If a shareholder fails to report the amount of the shareholder's losses and deductions that are disallowed for the taxable year of the discharge under section 1366(d)(1) to the S corporation, or if the S corporation knows that the amount reported by the shareholder is inaccurate, or if the information, as reported, appears to be incomplete or incorrect, the S corporation may rely on its own books and records, as well as other information available to the S corporation, to determine the amount of the shareholder's losses and deductions that are disallowed for the taxable year of the discharge under section 1366(d)(1), provided that the S corporation knows or reasonably believes that its information presents an accurate reflection of the shareholder's disallowed losses and deductions under section 1366(d)(1). The S corporation must report to each shareholder the amount of the S corporation's excess deemed NOL that is allocated to that shareholder under paragraph (d)(2) of this section, even if that amount is zero, in accordance with applicable forms and instructions.

(e) *Examples.* The following examples illustrate the application of this section:

*Example 1.* (i) *Facts.* In Year 4, X, a corporation in a title 11 case, is entitled under section 108(a)(1)(A) to exclude from gross income $100,000 of COD income. For Year 4, X has gross income in the amount of $50,000. In each of Years 1 and 2, X had no taxable income or loss. In Year 3, X had a net operating loss of $100,000, the use of which when carried over to Year 4 is not subject to any restrictions other than those of section 172.

(ii) *Analysis.* Pursuant to paragraph (b) of this section, X takes into account the net operating loss carryover from Year 3 in computing its taxable income for Year 4 before any portion of the COD income excluded under section 108(a)(1)(A) is applied to reduce tax attributes. Thus, the amount of the net operating loss carryover that is reduced under section 108(b)(2) and paragraph (a) of this section is $50,000.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1,* except that in Year 4 X sustains a net operating loss in the amount of $100,000. In addition, in each of Years 2 and 3, X reported taxable income in the amount of $25,000.

(ii) *Analysis.* Pursuant to paragraph (b) of this section and section 172, the net operating loss sustained in Year 4 is carried back to Years 2 and 3 before any portion of the COD income excluded under section 108(a)(1)(A) is applied to reduce tax attributes. Thus, the amount of the net operating loss that is reduced under section 108(b)(2) and paragraph (a) of this section is $50,000.

*Example 3.* (i) *Facts.* In Year 2, X, a corporation in a title 11 case, has outstanding debts of $200,000 and a depreciable asset that has an adjusted basis of $75,000 and a fair market value of $100,000. X has no other assets or liabilities. X has a net operating loss of $80,000 that is carried over to Year 2 but has no general business credit, minimum tax credit, or capital loss carryovers. Under a plan of reorganization, X transfers its asset to Corporation Y in exchange for Y stock with a value of $100,000. X distributes the Y stock to its creditors in exchange for release of their claims against X. X's shareholders receive nothing in the transaction. The transaction qualifies as a reorganization under section 368(a)(1)(G) that satisfies the requirements of section 354(b)(1)(A) and (B). For Year 2, X has gross income of $10,000 (without regard to any income from the discharge of indebtedness) and is allowed a depreciation deduction of $10,000 in respect of the asset. In addition, it generates no general business credits.

(ii) *Analysis.* On the distribution of Y stock to X's creditors, under section 108(a)(1)(A), X is entitled to exclude from gross income the debt discharge amount of $100,000. (Under section 108(e)(8), X is treated as satisfying $100,000 of the debt owed the creditors for $100,000, the fair market value of the Y stock transferred to those creditors.) In Year 2, X has no taxable income or loss because its gross income is exactly offset by the depreciation deduction. As a result of the depreciation deduction, X's basis in the asset is reduced by $10,000 to $65,000. Pursuant to paragraph (c) of this section, the amount of X's net operating loss to which Y succeeds pursuant to section 381 and the basis of X's property transferred to Y must take into account the reductions required by section 108(b). Pursuant to paragraph (a) of this section, X's net operating loss carryover in the amount of $80,000 is reduced by $80,000 of the COD income excluded under section 108(a)(1). In addition, X's basis in the asset is reduced by $20,000, the extent to which the COD income excluded under section 108(a)(1) did not reduce the net operating loss. Accordingly, as a result of the reorganization, there is no net operating loss to which Y succeeds under section 381. Pursuant to section 361, X recognizes no gain or loss on the transfer of its property to Y. Pursuant to section 362(b), Y's basis in the asset acquired from X is $45,000.

*Example 4.* (i) *Facts.* The facts are the same as in *Example 3,* except that X elects under section 108(b)(5) to reduce first the basis of its depreciable asset.

(ii) *Analysis.* As in *Example 3,* on the distribution of Y stock to X's creditors, under section 108(a)(1)(A), X is entitled to exclude from gross income the debt discharge amount of $100,000. In addition, in Year 2, X has no taxable income or loss because its gross income is exactly offset by the depreciation deduction. As a result of the depreciation deduction, X's basis in the asset is reduced by $10,000 to $65,000. Pursuant to paragraph (c) of this section, the amount of X's net operating loss to which Y succeeds pursuant to section 381 and the basis of X's property transferred to Y must take into account the reductions required by section 108(b). As a result of the election under section 108(b)(5), X's basis in the asset is reduced by $65,000 to $0. In addition, X's net operating loss is reduced by $35,000, the extent to which the amount excluded from income under section 108(a)(1)(A) does not reduce X's asset basis. Accordingly, as a result of the reorganization, Y succeeds to X's net operating loss in the amount of $45,000 under section 381. Pursuant to section 361, X recognizes no gain or loss on the transfer of its property to Y. Pursuant to section 362(b), Y's basis in the asset acquired from X is $0.

*Example 5.* (i) *Facts.* During the entire calendar year 2009, A, B, and C each own equal shares of stock in X, a calendar year S corporation. As of December 31, 2009, A, B, and C each have a zero stock basis and X does not have any indebtedness to A, B, or C. For the 2009 taxable year, X excludes from gross income $45,000 of COD income under section 108(a)(1)(A). The COD income (had it not been excluded) would have been allocated $15,000 to A, $15,000 to B, and $15,000 to C under section 1366(a). For the 2009 taxable year, X has $30,000 of losses and deductions that X passes through pro rata to A, B, and C in the amount of $10,000 each. The losses and deductions that pass through to A, B, and C are disallowed under section 1366(d)(1). In addition, B has $10,000 of section 1366(d) losses from prior years and C has $20,000 of section 1366(d) losses from prior years. A's ($10,000), B's ($20,000) and C's ($30,000) combined $60,000 of disallowed losses and deductions for the taxable year of the discharge are treated as a current year net operating loss tax attribute of X under section 108(d)(7)(B) (deemed NOL) for purposes of the section 108(b) reduction of tax attributes.

(ii) *Allocation*. Under section 108(b)(2)(A), X's $45,000 of excluded COD income reduces the $60,000 deemed NOL to $15,000. Therefore, X has a $15,000 excess net operating loss (excess deemed NOL) to allocate to its shareholders. Under paragraph (d)(2)(ii)(C) of this section, none of the $15,000 excess deemed NOL is allocated to A because A's section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction ($10,000) do not exceed A's share of the excluded COD income for 2008 ($15,000). Thus, A has no shareholder's excess amount. Each of B's and C's respective section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction exceed each of B's and C's respective shares of the excluded COD income for 2008. B's excess amount is $5,000 ($20,000 − $15,000) and C's excess amount is $15,000 ($30,000 − $15,000). Therefore, the total of all shareholders' excess amounts is $20,000. Under paragraph (d)(2) of this section, X will allocate $3,750 of the $15,000 excess deemed NOL to B ($15,000 × $5,000/$20,000) and $11,250 of the $15,000 excess deemed NOL to C ($15,000 × $15,000/$20,000). These amounts are treated as losses and deductions disallowed under section 1366(d)(1) for the taxable year of the discharge. Accordingly, at the beginning of 2010, A has no section 1366(d)(2) carryovers, B has $3,750 of carryovers, and C has $11,250 of carryovers.

(iii) *Character*. Immediately prior to the section 108(b)(2)(A) reduction, B's $20,000 of section 1366(d) losses and deductions consisted of $8,000 of long-term capital losses, $7,000 of section 1231 losses, and $5,000 of ordinary losses. After the section 108(b)(2)(A) tax attribute reduction, X will allocate $3,750 of the excess deemed NOL to B. Under paragraph (d)(3) of this section, the $3,750 excess deemed NOL allocated to B consists of $1,500 of long-term capital losses (($8,000/$20,000) × $3,750), $1,312.50 of section 1231 losses (($7,000/$20,000) × $3,750), and $937.50 of ordinary losses (($5,000/$20,000) × $3,750). As a result, at the beginning of 2010, B's $3,750 of section 1366(d)(2) carryovers consist of $1,500 of long-term capital losses, $1,312.50 of section 1231 losses, and $937.50 of ordinary losses.

*Example 6*. (i) A and B each own 50 percent of the shares of stock in X, a calendar year S corporation. On March 1, 2009, X realizes $12,000 of COD income and excludes this amount from gross income under section 108(a)(1)(A) for X's 2009 taxable year. On June 30, 2009, A sells all of her shares of stock in X to C in a transfer not described in section 1041(a). X does not make a terminating election under section 1377(a)(2). The COD income (had it not been excluded) would have been allocated $3,000 to A, $6,000 to B, and $3,000 to C under section 1366(a). Prior to the section 108(b)(2)(A) reduction, for the taxable year of the discharge the shareholders have disallowed losses and deductions under section 1366(d) (including disallowed losses carried over to the current year under section 1366(d)(2)) in the following amounts: A—$5,000, B—$13,000, and C—$2,000. The combined $20,000 of disallowed losses and deductions for the taxable year of the discharge are treated as a current year net operating loss tax attribute of X under section 108(d)(7)(B) (deemed NOL).

(ii) Under section 108(b)(2)(A), X's $12,000 of excluded COD income reduces the $20,000 deemed NOL to $8,000. Therefore, X has an $8,000 excess net operating loss (excess deemed NOL) to allocate to its shareholders. Under paragraph (d)(2)(ii)(C) of this section, none of the $8,000 excess deemed NOL is allocated to C because C's section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction ($2,000) do not exceed C's share of the excluded COD income for 2008 ($3,000). However, each of A's and B's respective section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction exceed each of A's and B's respective shares of the excluded COD income for 2009. A's excess amount is $2,000 ($5,000 − $3,000) and B's excess amount is $7,000 ($13,000 − $6,000). Therefore, the total of all shareholders' excess amounts is $9,000. Under paragraph (d)(2) of this section, X will allocate $1,777.78 of the $8,000 excess deemed NOL to A ($8,000 × $2,000/$9,000) and $6,222.22 of the $8,000 excess deemed NOL to B ($8,000 × $7,000/$9,000). However, because A transferred all of her shares of stock in X in a transaction not described in section 1041(a), A's $1,777.78 of section 1366(d) losses and deductions are permanently disallowed under paragraph (d)(2)(iii) of this section. Accordingly, at the beginning of 2010, B has $6,222.22 of section 1366(d)(2) carryovers and C has no section 1366(d)(2) carryovers.

*Example 7*. The facts are the same as in *Example 6*, except that X, with the consent of A and C, makes a terminating election under section 1377(a)(2) upon A's sale of her stock in X to C. Therefore, the COD income (had it not been excluded) would have been allocated $6,000 to A, $6,000 to B, and $0 to C. Under paragraph (d)(2)(ii)(C) of this section, none of the $8,000 excess deemed NOL is allocated to A because A's section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction ($5,000) do not exceed A's share of the excluded COD income for 2009 ($6,000). However, each of B's and C's respective section 1366(d) losses and deductions immediately prior to the section 108(b)(2)(A) reduction exceed each of B's and C's respective shares of the excluded COD income for 2009. B's excess amount is $7,000 ($13,000 − $6,000), C's excess amount is $2,000 ($2,000 − $0). Therefore, the total of all shareholders' excess amounts is $9,000. Under paragraph (d)(2) of this section, X will allocate $6,222.22 of the $8,000 excess deemed NOL to B ($8,000 × $7,000/$9,000) and $1,777.78 of the $8,000 excess deemed NOL to C. Accordingly, at the beginning of 2010, B has $6,222.22 of section 1366(d)(2) carryovers and C has $1,777.78 of section 1366(d)(2) carryovers.

(f) *Effective/applicability date*—(1) Paragraphs (a), (b), (c), and *Examples 1, 2, 3,* and *4* of paragraph (e) of this section apply to discharges of indebtedness occurring on or after May 10, 2004.

(2) Paragraph (d) and *Examples 5, 6,* and *7* of paragraph (e) of this section apply to discharges of indebtedness occurring on or after October 30, 2009. Paragraph (d)(2)(iii) of this section applies on and after July 23, 2014. For rules that apply before that date, see 26 CFR part 1 (revised as of April 1, 2014).

[T.D. 9080, 68 FR 42592, July 18, 2003; 68 FR 56556, Oct. 1, 2003. Redesignated and amended by T.D. 9127, 69 FR 26039, May 11, 2004; T.D. 9469, 74 FR 56111, Oct. 30, 2009; T.D. 9682, 79 FR 42677, July 23, 2014]

### § 1.108–8 Indebtedness satisfied by partnership interest.

(a) *In general.* For purposes of determining income of a debtor from discharge of indebtedness (COD income), if a debtor partnership transfers a capital or profits interest in the partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness (a debt-for-equity exchange), the partnership is treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the partnership interest.

(b) *Determination of fair market value*—(1) *In general.* All the facts and circumstances are considered in determining the fair market value of a partnership interest transferred by a debtor partnership to a creditor in satisfaction of the debtor partnership's indebtedness (debt-for-equity interest) for purposes of paragraph (a) of this section. If the fair market value of the debt-for-equity interest does not equal the fair market value of the indebtedness exchanged, then general tax law principles shall apply to account for the difference.

(2) *Safe harbor*—(i) *General rule.* For purposes of paragraph (a) of this section, the fair market value of a debt-for-equity interest is deemed to be equal to the liquidation value of the debt-for-equity interest, as defined in paragraph (b)(2)(iii) of this section, if the following requirements are satisfied—

(A) The creditor, debtor partnership, and its partners treat the fair market value of the indebtedness as being equal to the liquidation value of the debt-for-equity interest for purposes of determining the tax consequences of the debt-for-equity exchange;

(B) If, as part of the same overall transaction, the debtor partnership transfers more than one debt-for-equity interest to one or more creditors, then each creditor, debtor partnership, and its partners treat the fair market value of each debt-for-equity interest transferred by the debtor partnership to such creditors as equal to its liquidation value;

(C) The debt-for-equity exchange is a transaction that has terms that are comparable to terms that would be agreed to by unrelated parties negotiating with adverse interests; and

(D) Subsequent to the debt-for-equity exchange, the debtor partnership does not redeem the debt-for-equity interest, and no person bearing a relationship to the debtor partnership or its partners that is specified in section 267(b) or section 707(b) purchases the debt-for-equity interest, as part of a plan at the time of the debt-for-equity exchange that has as a principal purpose the avoidance of COD income by the debtor partnership.

(ii) *Tiered-partnership rule.* For purposes of this paragraph (b)(2), the liquidation value of a debt-for-equity interest in a partnership (upper-tier partnership) that directly or indirectly owns an interest in one or more partnerships (lower-tier partnership(s)) is determined by taking into account the liquidation value of such lower-tier partnership interests.

(iii) *Definition of liquidation value.* For purposes of this paragraph (b)(2), the liquidation value of a debt-for-equity interest equals the amount of cash that the creditor would receive with respect to the debt-for-equity interest if, immediately after the debt-for-equity exchange, the partnership sold all of its assets (including goodwill, going concern value, and any other intangibles) for cash equal to the fair market value of those assets and then liquidated.

(c) *Example.* The following example illustrates the provisions of this section:

*Example.* (i) AB partnership has $1,000 of outstanding indebtedness owed to C. C agrees to transfer to AB partnership the $1,000 indebtedness in a debt-for-equity exchange for a debt-for-equity interest in AB partnership. The liquidation value of C's debt-for-equity interest is $700, which is the amount of cash that C would receive with respect to that interest if, immediately after the debt-for-equity exchange, AB partnership sold all of its assets for cash equal to the fair market value of those assets and then liquidated. Each of the requirements of the liquidation value safe harbor described in paragraph (b)(2) of this section is satisfied.

(ii) Because the requirements in paragraph (b)(2) of this section are satisfied, the fair market value of C's debt-for-equity interest in AB partnership for purposes of determining AB partnership's COD income is the liquidation value of C's debt-for-equity interest, or $700. Accordingly, AB partnership is treated as satisfying the $1,000 indebtedness for $700 under section 108(e)(8).

(d) *Effective/applicability date.* This section applies to debt-for-equity exchanges occurring on or after November 17, 2011.

[T.D. 9557, 76 FR 71258, Nov. 17, 2011]

### § 1.108(c)–1T [Reserved]

### § 1.108(i)–0 Definitions and effective/applicability dates.

(a) *Definitions.* For purposes of regulations under section 108(i)—

(1) *Acquisition.* An *acquisition,* with respect to any applicable debt instrument, includes an acquisition of the debt instrument for cash or other property, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, the contribution of the debt instrument to capital, the complete forgiveness of the indebtedness by the holder of the debt instrument, and a direct or an indirect acquisition within the meaning of § 1.108–2.

(2) *Applicable debt instrument.* An *applicable debt instrument* is a debt instrument that was issued by a C corporation or any other person in connection with the conduct of a trade or business by such person. In the case of an intercompany obligation (as defined in § 1.1502–13(g)(2)(ii)), *applicable debt instrument* includes only an instrument for which COD income is realized upon the instrument's deemed satisfaction under § 1.1502–13(g)(5).

(3) *C corporation issuer. C corporation issuer* means a C corporation that issues a debt instrument with any deferred OID deduction.

(4) *C corporation partner.* A *C corporation partner* is a C corporation that is a direct or indirect partner of an electing partnership or a related partnership.

(5) *COD income. COD income* means income from the discharge of indebtedness, as determined under sections 61(a)(12) and 108(a) and the regulations under those sections.

(6) *COD income amount.* A *COD income amount* is a partner's distributive share of COD income with respect to an applicable debt instrument of an electing partnership.

(7) *Debt instrument. Debt instrument* means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(8) *Deferral period.* For a reacquisition that occurs in 2009, *deferral period* means the taxable year of the reacquisition and the four taxable years following such taxable year. For a reacquisition that occurs in 2010, *deferral period* means the taxable year of the reacquisition and the three taxable years following such taxable year.

(9) *Deferred amount.* A *deferred amount* is the portion of a partner's COD income amount with respect to an applicable debt instrument that is deferred under section 108(i).

(10) *Deferred COD income. Deferred COD income* means COD income that is deferred under section 108(i).

(11) *Deferred item.* A *deferred item* is any item of deferred COD income or deferred OID deduction that has not been previously taken into account under section 108(i).

(12) *Deferred OID deduction.* A *deferred OID deduction* means an otherwise allowable deduction for OID that is deferred under section 108(i)(2) with respect to a debt instrument issued (or treated as issued under section 108(e)(4)) in a debt-for-debt exchange

described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a).

(13) *Deferred section 465 amount.* A *deferred section 465 amount* is described in paragraph (d)(3) of § 1.108(i)–2.

(14) *Deferred section 752 amount.* A *deferred section 752 amount* is described in paragraph (b)(3) of § 1.108(i)–2.

(15) *Direct partner.* A *direct partner* is a person that owns a direct interest in a partnership.

(16) *Electing corporation.* An *electing corporation* is a C corporation with deferred COD income by reason of a section 108(i) election.

(17) *Electing entity.* An *electing entity* is an entity that is a taxpayer that makes an election under section 108(i).

(18) *Electing member.* An *electing member* is an electing corporation that is a member of an affiliated group that files a consolidated return.

(19) *Electing partnership.* An *electing partnership* is a partnership that makes an election under section 108(i).

(20) *Electing S corporation.* An *electing S corporation* is an S corporation that makes an election under section 108(i).

(21) *Included amount.* An *included amount* is the portion of a partner's COD income amount with respect to an applicable debt instrument that is not deferred under section 108(i) and is included in the partner's distributive share of partnership income for the taxable year of the partnership in which the reacquisition occurs.

(22) *Inclusion period.* The *inclusion period* is the five taxable years following the last taxable year of the deferral period.

(23) *Indirect partner.* An *indirect partner* is a person that owns an interest in a partnership through an S corporation and/or one or more partnerships.

(24) *Issuing entity.* An *issuing entity* is any entity that is—

(i) A related partnership;

(ii) A related S corporation;

(iii) An electing partnership that issues a debt instrument (or is treated as issuing a debt instrument under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a); or

(iv) An electing S corporation that issues a debt instrument (or is treated as issuing a debt instrument under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a).

(25) *OID. OID* means original issue discount, as determined under sections 1271 through 1275 (and the regulations under those sections). If the amount of OID with respect to a debt instrument is less than a de minimis amount as determined under § 1.1273–1(d), the OID is treated as zero for purposes of section 108(i)(2).

(26) *Reacquisition.* A *reacquisition,* with respect to any applicable debt instrument, is any event occurring after December 31, 2008 and before January 1, 2011, that causes COD income with respect to such applicable debt instrument, including any acquisition of the debt instrument by the debtor that issued (or is otherwise the obligor under) the debt instrument or a person related to such debtor (within the meaning of section 108(i)(5)(A)).

(27) *Related partnership.* A *related partnership* is a partnership that is related to the electing entity (within the meaning of section 108(i)(5)(A)) and that issues a debt instrument in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a).

(28) *Related S corporation.* A *related S corporation* is an S corporation that is related to the electing entity (within the meaning of section 108(i)(5)(A)) and that issues a debt instrument in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a).

(29) *Separate interest.* A *separate interest* is a direct interest in an electing partnership or in a partnership or S corporation that is a direct or indirect partner of an electing partnership.

(30) *S corporation partner.* An *S corporation partner* is an S corporation that is a direct or indirect partner of an electing partnership or a related partnership.

(b) *Effective/Applicability dates*—(1) *In general.* The rules of this section, § 1.108(i)–1, and § 1.108(i)–2, apply on or after July 2, 2013, to reacquisitions of applicable debt instruments in taxable years ending after December 31, 2008. In addition, the rules of §1.108(i)–3 apply on or after July 2, 2013, to debt instruments issued after December 31, 2008, in connection with reacquisitions of applicable debt instruments in taxable years ending after December 31, 2008.

(2) *Prior periods.* For rules applying before July 2, 2013, see §1.108(i)–0T, §1.108(i)–1T, §1.108(i)–2T, and §1.108(i)–3T, as contained in 26 CFR part 1, revised April 1, 2013.

[T.D. 9622, 78 FR 39986, July 3, 2013; 78 FR 48607, Aug. 9, 2013]

### § 1.108(i)–1 Deferred discharge of indebtedness income and deferred original issue discount deductions of C corporations.

(a) *Overview.* Section 108(i)(1) provides an election for the deferral of COD income arising in connection with the reacquisition of an applicable debt instrument. An electing corporation generally includes deferred COD income ratably over the inclusion period. Paragraph (b) of this section provides rules for the mandatory acceleration of an electing corporation's remaining deferred COD income, the mandatory acceleration of a C corporation issuer's deferred OID deductions, and for the elective acceleration of an electing member's (other than the common parent's) remaining deferred COD income. Paragraph (c) of this section provides examples illustrating the application of the mandatory and elective acceleration rules. Paragraph (d) of this section provides rules for the computation of an electing corporation's earnings and profits. Paragraph (e) of this section refers to the effective/applicability dates.

(b) *Acceleration events*—(1) *Deferred COD income.* Except as otherwise provided in paragraphs (b)(2) and (3) of this section, and §1.108(i)–2(b)(6) (in the case of a corporate partner), an electing corporation's deferred COD income is taken into account ratably over the inclusion period.

(2) *Mandatory acceleration events.* An electing corporation takes into account all of its remaining deferred COD income, including its share of an electing partnership's deferred COD income, immediately before the occurrence of any one of the events described in this paragraph (b)(2) (mandatory acceleration events), regardless of whether the electing corporation is in a title 11 or similar case at the time the mandatory acceleration event occurs.

(i) *Changes in tax status.* The electing corporation changes its tax status. For purposes of the preceding sentence, an electing corporation is treated as changing its tax status if it becomes one of the following entities:

(A) A tax-exempt entity as defined in §1.337(d)–4(c)(2).

(B) An S corporation as defined in section 1361(a)(1).

(C) A qualified subchapter S subsidiary as defined in section 1361(b)(3)(B).

(D) An entity operating on a cooperative basis within the meaning of section 1381.

(E) A regulated investment company (RIC) as defined in section 851 or a real estate investment trust (REIT) as defined in section 856.

(F) A qualified REIT subsidiary as defined in section 856(i), but only if the qualified REIT subsidiary was not a REIT immediately before it became a qualified REIT subsidiary.

(ii) *Cessation of corporate existence*—(A) *In general.* The electing corporation ceases to exist for Federal income tax purposes.

(B) *Exception for section 381(a) transactions*—(*1*) *In general.* The electing corporation is not treated as ceasing to exist and is not required to take into account its remaining deferred COD income solely because its assets are acquired in a transaction to which section 381(a) applies. In such a case, the acquiring corporation succeeds to the electing corporation's remaining deferred COD income and becomes subject to section 108(i) and the regulations thereunder, including all reporting requirements, as if the acquiring corporation were the electing corporation. A transaction is not treated as one to which section 381(a) applies for purposes of this paragraph (b)(2)(ii)(B) in the following circumstances—

(*i*) The acquisition of the assets of an electing corporation by an S corporation, if the acquisition is described in section 1374(d)(8);

(*ii*) The acquisition of the assets of an electing corporation by a RIC or REIT, if the acquisition is described in §1.337(d)–7(a)(2)(ii);

(*iii*) The acquisition of the assets of a domestic electing corporation by a foreign corporation;

(*iv*) The acquisition of the assets of a foreign electing corporation by a domestic corporation, if as a result of the transaction, one or more exchanging shareholders include in income as a deemed dividend the all earnings and profits amount with respect to stock in the foreign electing corporation pursuant to §1.367(b)–3(b)(3);

(*v*) The acquisition of the assets of an electing corporation by a tax-exempt entity as defined in §1.337(d)–4(c)(2); or

(*vi*) The acquisition of the assets of an electing corporation by an entity operating on a cooperative basis within the meaning of section 1381.

(*2*) *Special rules for consolidated groups*—(*i*) *Liquidations*. For purposes of paragraph (b)(2)(ii)(B) of this section, the acquisition of assets by distributee members of a consolidated group upon the liquidation of an electing corporation is not treated as a transaction to which section 381(a) applies, unless immediately prior to the liquidation, one of the distributee members owns stock in the electing corporation meeting the requirements of section 1504(a)(2) (without regard to §1.1502–34). See §1.1502–80(g).

(*ii*) *Taxable years*. In the case of an intercompany transaction to which section 381(a) applies, the transaction does not cause the transferor or distributor to have a short taxable year for purposes of determining the taxable year of the deferral and inclusion period.

(iii) *Net value acceleration rule*—(A) *In general*. The electing corporation engages in an impairment transaction and, immediately after the transaction, the gross value of the electing corporation's assets (gross asset value) is less than one hundred and ten percent of the sum of its total liabilities and the tax on the net amount of its deferred items (the net value floor) (the net value acceleration rule). Impairment transactions are any transactions, however effected, that impair an electing corporation's ability to pay the amount of Federal income tax liability on its deferred COD income and include, for example, distributions (including section 381(a) transactions), redemptions, below-market sales, charitable contributions, and the incurrence of additional indebtedness without a corresponding increase in asset value. Value-for-value sales or exchanges (for example, an exchange to which section 351 or section 721 applies), or mere declines in the market value of the electing corporation's assets are not impairment transactions. In addition, an electing corporation's investments and expenditures in pursuance of its good faith business judgment are not impairment transactions. For purposes of determining an electing corporation's gross asset value, the amount of any distribution that is not treated as an impairment transaction under paragraph (b)(2)(iii)(D) of this section (distributions and charitable contributions consistent with historical practice) or under paragraph (b)(2)(iii)(E) of this section (special rules for RICs and REITs) is treated as an asset of the electing corporation. Solely for purposes of computing the amount of the net value floor, the tax on the deferred items is determined by applying the highest rate of tax specified in section 11(b) for the taxable year.

(B) *Transactions integrated*. Any transaction that occurs before the reacquisition of an applicable debt instrument, but that occurs pursuant to the same plan as the reacquisition, is taken into account in determining whether the gross asset value of the electing corporation is less than the net value floor.

(C) *Corrective action to restore net value*. An electing corporation is not required to take into account its deferred COD income under the net value acceleration rule of paragraph (b)(2)(iii)(A) of this section if, before the due date of the electing corporation's return (including extensions), value is restored in a transaction in an amount equal to the lesser of—

(*1*) The amount of value that was removed from the electing corporation in one or more impairment transactions (net of amounts previously restored under this paragraph (b)(2)(iii)(C)); or

(*2*) The amount by which the electing corporation's net value floor exceeds its gross asset value.

For example, assume an electing corporation incurs $50 of debt, distributes the $50 of proceeds to its shareholder, and immediately after the distribution, the electing corporation's gross asset value is below the net value floor by $25. The electing corporation may avoid the inclusion of its remaining deferred COD income if value of at least $25 is restored to it before the due date of the electing corporation's tax return (including extensions) for the taxable year that includes the distribution. The value that must be restored is determined at the time of the impairment transaction on a net value basis (for example, additional borrowings by an electing corporation do not restore value).

(D) *Exceptions for distributions and charitable contributions that are consistent with historical practice.* An electing corporation's distributions are not treated as impairment transactions (and are not taken into account as a reduction of the electing corporation's gross asset value when applying the net value acceleration rule to any impairment transaction), to the extent that the distributions are described in section 301(c) and the amount of these distributions, in the aggregate, for the applicable taxable year (applicable distribution amount) does not exceed the annual average amount of section 301(c) distributions over the preceding three taxable years (average distribution amount). If an electing corporation's applicable distribution amount exceeds its average distribution amount (excess amount), then the amount of the impairment transaction equals the excess amount. Appropriate adjustments must be made to take into account any issuances or redemptions of stock, or similar transactions, occurring during the taxable year of distribution or any of the preceding three taxable years. If the electing corporation has a short taxable year for the year of the distribution or for any of the preceding three taxable years, the amounts are determined on an annualized basis. If an electing corporation has been in existence for less than three years, the period during which the electing corporation has been in existence is substituted for the preceding three taxable years. For purposes of determining an electing corporation's average distribution amount, the electing corporation does not take into account the distribution history of a distributor or transferor in a transaction to which section 381(a) applies (other than a transaction described in section 368(a)(1)(F)). Rules similar to those prescribed in this paragraph (b)(2)(iii)(D) also apply to an electing corporation's charitable contributions (within the meaning of section 170(c)) that are consistent with its historical practice.

(E) *Special rules for RICs and REITs*—(*1*) *Distributions.* Notwithstanding paragraph (b)(2)(iii)(D) of this section, in the case of a RIC or REIT, any distribution with respect to stock that is treated as a dividend under section 852 or 857 is not treated as an impairment transaction (and is not taken into account as a reduction in gross asset value when applying the net value acceleration rule to any impairment transaction).

(*2*) *Redemptions by RICs.* Any redemption of a redeemable security, as defined in 15 U.S.C. section 80a-2(a)(32), by a RIC in the ordinary course of business is not treated as an impairment transaction (and is not taken into account as a reduction in gross asset value when applying the net value acceleration rule to any impairment transaction).

(F) *Special rules for consolidated groups*—(*1*) *Impairment transactions and net value acceleration rule.* In the case of an electing member, the determination of whether the member has engaged in an impairment transaction is made on a group-wide basis. An electing member is treated as engaging in an impairment transaction if any member's transaction impairs the group's ability to pay the tax liability associated with all electing members' deferred COD income. Accordingly, intercompany transactions are not impairment transactions. Similarly, the net value acceleration rule is applied by reference to the gross asset value of all members (excluding stock of members whether or not described in section 1504(a)(4)), the liabilities of all members, and the tax on all members' deferred items. For example, assume P is the common parent of the P–S consolidated group, S has a section 108(i) election in effect, and S makes a $100 distribution to P which, on a separate entity basis, would reduce S's gross asset value below the net value floor. S's intercompany distribution to P is not an impairment transaction. However, if P makes a $100 distribution to its shareholder, P's distribution is an impairment transaction (unless the distribution is consistent with its historical practice under paragraph (b)(2)(iii)(D) of this section), and the net value acceleration rule is applied by reference to the assets, liabilities, and deferred items of the P–S group.

(*2*) *Departing member*. If an electing member that previously engaged in one or more impairment transactions on a separate entity basis ceases to be a member of a consolidated group (departing member), the cessation is treated as an impairment transaction and the net value acceleration rule under paragraph (b)(2)(iii)(A) of this section is applied to the departing member on a separate entity basis immediately after ceasing to be a member (and taking into account the impairment transaction(s) that occurred on a separate entity basis). If the departing member's gross asset value is below the net value floor, the departing member's remaining deferred COD income is taken into account immediately before the departing member ceases to be a member (unless value is restored under paragraph (b)(2)(iii)(C) of this section). If the departing member's deferred COD income is not accelerated, the departing member is subject to the reporting requirements of section 108(i) on a separate entity basis. If the departing member becomes a member of another consolidated group, the cessation is treated as an impairment transaction and the net value acceleration rule under paragraph (b)(2)(iii)(A) of this section is applied by reference to the assets, liabilities, and the tax on deferred items of the members of the acquiring group immediately after the transaction. If the acquiring group's gross asset value is below the net value floor, the departing member's remaining deferred COD income is taken into account immediately before the departing member ceases to be a member (unless value is restored under paragraph (b)(2)(iii)(C) of this section). If the departing member's remaining deferred COD income is not accelerated, the common parent of the acquiring group succeeds to the reporting requirements of section 108(i) with respect to the departing member.

(3) *Elective acceleration for certain consolidated group members*—(i) *In general*. An electing member (other than the common parent) of a consolidated group may elect at any time to accelerate in full (and not in part) the inclusion of its remaining deferred COD income with respect to all applicable debt instruments by filing a statement described in paragraph (b)(3)(ii) of this section. Once made, an election to accelerate deferred COD income under this paragraph (b)(3) is irrevocable.

(ii) *Time and manner for making election*—(A) *In general*. The election to accelerate the inclusion of an electing member's remaining deferred COD income with respect to all applicable debt instruments is made on a statement attached to a timely filed tax return (including extensions) for the year in which the deferred COD income is taken into account. The election is made by the common parent on behalf of the electing member. See §1.1502–77(a).

(B) *Additional information*. The statement must include—

(*1*) *Label*. A label entitled ''SECTION 1.108(i)–1 ELECTION AND INFORMATION STATEMENT BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF THE ELECTING MEMBER]''; and

(*2*) *Required Information*. An identification of each applicable debt instrument to which an election under this paragraph (b)(3) applies and the corresponding amount of—

(*i*) Deferred COD income that is accelerated under this paragraph (b)(3); and

(*ii*) Deferred OID deductions that are accelerated under paragraph (b)(4) of this section.

(4) *Deferred OID deductions*—(i) *In general*. Except as otherwise provided in paragraph (b)(4)(ii) of this section and §1.108(i)–2(b)(6) (in the case of a C corporation partner), a C corporation issuer's deferred OID deductions are

taken into account ratably over the inclusion period.

(ii) *OID acceleration events.* A C corporation issuer takes into account all of its remaining deferred OID deductions with respect to a debt instrument immediately before the occurrence of any one of the events described in this paragraph (b)(4)(ii), regardless of whether the C corporation issuer is in a title 11 or similar case.

(A) *Inclusion of deferred COD income.* An electing entity or its owners take into account all of the remaining deferred COD income to which the C corporation issuer's deferred OID deductions relate. If, under §1.108(i)–2(b) or (c), an electing entity or its owners take into account only a portion of the deferred COD income to which the deferred OID deductions relate, then the C corporation issuer takes into account a proportionate amount of the remaining deferred OID deductions.

(B) *Changes in tax status.* The C corporation issuer changes its tax status within the meaning of paragraph (b)(2)(i) of this section.

(C) *Cessation of corporate existence*—(*1*) *In general.* The C corporation issuer ceases to exist for Federal income tax purposes.

(*2*) *Exception for section 381(a) transactions*—(*i*) *In general.* A C corporation issuer is not treated as ceasing to exist and does not take into account its remaining deferred OID deductions in a transaction to which section 381(a) applies, taking into account the application of §1.1502–34, as appropriate. See §1.1502–80(g). This exception does not apply to a transaction that is not treated as one to which section 381(a) applies under paragraph (b)(2)(iii)(B)(*1*) of this section.

(*ii*) *Taxable years.* In the case of an intercompany transaction to which section 381(a) applies, the transaction does not cause the transferor or distributor to have a short taxable year for purposes of determining the taxable year of the deferral and inclusion period.

(c) *Examples.* The application of this section is illustrated by the following examples. Unless otherwise stated, P, S, S1, and X are domestic C corporations, and each files a separate return on a calendar year basis:

*Example 1 Net value acceleration rule.* (i) *Facts.* On January 1, 2009, S reacquires its own note and realizes $400 of COD income. Pursuant to an election under section 108(i), S defers recognition of the entire $400 of COD income. Therefore, absent a mandatory acceleration event, S will take into account $80 of its deferred COD income in each year of the inclusion period. On December 31, 2010, S makes a $25 distribution to its sole shareholder, P, and this is the only distribution made by S in the past four years. Immediately following the distribution, S's gross asset value is $100, S has no liabilities, and the Federal income tax on S's $400 of deferred COD income is $140. Accordingly, S's net value floor is $154 (110% × $140).

(ii) *Analysis.* Under paragraph (b)(2)(iii)(A) of this section, S's distribution is an impairment transaction. Immediately following the distribution, S's gross asset value of $100 is less than the net value floor of $154. Accordingly, under the net value acceleration rule of paragraph (b)(2)(iii)(A) of this section, S takes into account its $400 of deferred COD income immediately before the distribution.

(iii) *Corrective action to restore value.* The facts are the same as in paragraph (i) of this *Example 1,* except that P contributes assets with a value of $25 to S before the due date of S's 2010 return (including extensions). Because P restores $25 of value to S (the lesser of the amount of value removed in the distribution ($25) or the amount by which S's net value floor exceeds its gross asset value ($54)), under paragraph (b)(2)(iii)(C) of this section, S does not take into account its $400 of deferred COD income.

*Example 2 Distributions consistent with historical practice.* (i) *Facts.* P, a publicly traded corporation, makes a valid section 108(i) election with respect to COD income realized in 2009. On December 31, 2009, P distributes $25 million on its 5 million shares of common stock outstanding. As of January 1, 2006, P has 10 million shares of common stock outstanding, and on March 31, 2006, P distributes $10 million on those 10 million shares. On September 15, 2006, P effects a 2:1 reverse stock split, and on December 31, 2006, P distributes $10 million on its 5 million shares of common stock outstanding. In each of 2007 and 2008, P distributes $5 million on its 5 million shares of common stock outstanding. All of the distributions are described in section 301(c).

(ii) *Amount of impairment transaction.* Under paragraph (b)(2)(iii)(D) of this section, P's 2009 distributions are not treated as impairment transactions (and are not taken into account as a reduction of P's gross asset value when applying the net value acceleration rule to any impairment transaction), to the extent that the aggregate amount distributed in 2009 (the applicable distribution amount) does not exceed the annual average amount of distributions (the average distribution amount) over the preceding three taxable years. Accordingly, P's applicable distribution amount for 2009 is $25 million, and its average distribution amount is $10 million ($20 million (2006) plus $5 million (2007) plus $5 million (2008) divided by 3). The reverse stock split in 2006 is not a transaction requiring an adjustment to the determination of the average distribution amount. Because P's applicable distribution amount of $25 million exceeds its average distribution amount of $10 million, under paragraph (b)(2)(iii)(D) of this section, the amount of P's 2009 distribution that is treated as an impairment transaction is $15 million. The balance of the 2009 distribution, $10 million, is not treated as an impairment transaction (and is not taken into account as a reduction in P's gross asset value when applying the net value acceleration rule to any impairment transaction).

(iii) *Distribution history*. The facts are the same as in paragraph (i) of this *Example 2*, except that in 2010, P merges into X in a transaction to which section 381(a) applies, with X succeeding to P's deferred COD income, and X makes a distribution to its shareholders. For purposes of determining whether X's distribution is consistent with its historical practice, the average distribution amount is determined solely with respect to X's distribution history.

*Example 3 Cessation of corporate existence*. (i) *Transaction to which section 381(a) applies*. P owns all of the stock of S. In 2009, S reacquires its own note and elects to defer recognition of its $400 of COD income under section 108(i). On December 31, 2010, S liquidates into P in a transaction that qualifies under section 332. Under paragraph (b)(2) of this section, S must take into account all of its remaining deferred COD income upon the occurrence of any one of the mandatory acceleration events. Although S ceases its corporate existence as a result of the liquidation, S is not required to take into account its remaining deferred COD income under the exception in paragraph (b)(2)(ii)(B) of this section because its assets are acquired in a transaction to which section 381(a) applies. However, under paragraph (b)(2)(iii)(A) of this section, S's distribution to P is an impairment transaction and the net value acceleration rule is applied with respect to the assets, liabilities, and deferred items of P (S's successor) immediately following the distribution. If S's deferred COD income is not taken into account under the net value acceleration rule of (b)(2)(iii) of this section, P succeeds to S's remaining deferred COD income and to S's reporting requirements as if P were the electing corporation.

(ii) *Debt-laden distributee*. The facts are the same as in paragraph (i) of this *Example 3*, except that in the liquidation, S distributes $100 of assets to P, a holding company whose only asset is its stock in S. Assume that immediately following the distribution, P's gross asset value is $100, P has $60 of liabilities, and the Federal income tax on the $400 of deferred COD income is $140. Under paragraph (b)(2) of this section, S must take into account all of its remaining deferred COD income upon the occurrence of any one of the mandatory acceleration events. Although S ceases its corporate existence as a result of the liquidation, S is not required to take into account its remaining deferred COD income under the exception in paragraph (b)(2)(ii)(B) of this section because its assets are acquired in a transaction to which section 381(a) applies. However, under paragraph (b)(2)(iii)(A) of this section, S's distribution to P is an impairment transaction and the net value acceleration rule is applied with respect to the assets, liabilities, and deferred items of P (S's successor). Immediately following the distribution, P's gross asset value of $100 is less than the net value floor of $220 [110% × ($60 + $140)]. Accordingly, under the net value acceleration rule of paragraph (b)(2)(iii)(A) of this section, S is required to take into account its $400 of deferred COD income immediately before the distribution, unless value is restored to P pursuant to paragraph (b)(2)(iii)(C) of this section.

(iii) *Foreign acquirer*. The facts are the same as in paragraph (i) of this *Example 3*, except that P is a foreign corporation. Although S's assets are acquired in a transaction to which section 381(a) applies, under paragraph (b)(2)(ii)(B)(*1*)(*iii*) of this section, the exception to accelerated inclusion does not apply and S takes into account its remaining deferred COD income immediately before the liquidation. See also section 367(e)(2) and the regulations thereunder.

(iv) *Section 338 transaction*. P, the common parent of a consolidated group (P group), owns all the stock of S1, one of the members of the P group. In 2009, S1 reacquires its own indebtedness and realizes $30 of COD income. Pursuant to an election under section 108(i), S1 defers recognition of the entire $30 of COD income. In 2010, P sells all the stock of S1 to X, an unrelated corporation, for $300, and P and X make a timely section 338(h)(10) election with respect to the sale. Under paragraph (b)(2)(ii)(A) of this section, an electing corporation takes into account its remaining deferred COD income when it ceases its existence for Federal income tax purposes unless the exception in paragraph (b)(2)(ii)(B) of this section applies. Pursuant to section 338(h)(10) and the regulations, S1 is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the discharge of its liabilities. This deemed value-for-value exchange is not an impairment transaction. Following the deemed sale, while S1 is still a member of the P group, S1 is treated as distributing all of its assets to P and as ceasing its existence. Under these facts, the distribution of all of S1's assets constitutes a deemed liquidation, and is a transaction to which sections 332 and 381(a) apply. Although S1 ceases its corporate existence as a result of the liquidation, S1 is not required to take into account its remaining deferred COD income under the exception in paragraph (b)(2)(ii)(B) of this section because its assets are acquired in a transaction to which section 381(a) applies. P succeeds to S1's remaining deferred COD income and to S1's reporting requirements as if P were the electing corporation. Under paragraph (b)(2)(iii)(F)(*1*) of this section, the intercompany distribution from S1 to P is not an impairment transaction.

(d) *Earnings and profits*—(1) *In general.* Deferred COD income increases earnings and profits in the taxable year that it is realized and not in the taxable year or years that the deferred COD income is includible in gross income. Deferred OID deductions decrease earnings and profits in the taxable year or years in which the deduction would be allowed without regard to section 108(i).

(2) *Exceptions*—(i) *RICs and REITs.* Notwithstanding paragraph (d)(1) of this section, deferred COD income increases earnings and profits of a RIC or REIT in the taxable year or years in which the deferred COD income is includible in gross income and not in the year that the deferred COD income is realized. Deferred OID deductions decrease earnings and profits of a RIC or REIT in the taxable year or years that the deferred OID deductions are deductible.

(ii) *Alternative minimum tax.* For purposes of calculating alternative minimum taxable income, any items of deferred COD income or deferred OID deduction increase or decrease, respectively, adjusted current earnings under section 56(g)(4) in the taxable year or years that the item is includible or deductible.

(e) *Effective/applicability dates.* For *effective/applicability dates,* see §1.108(i)–0(b).

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## §1.108(i)–2 Application of section 108(i) to partnerships and S corporations.

(a) *Overview.* Under section 108(i), a partnership or an S corporation may elect to defer COD income arising in connection with a reacquisition of an applicable debt instrument for the deferral period. COD income deferred under section 108(i) is included in gross income ratably over the inclusion period, or earlier upon the occurrence of any acceleration event described in paragraph (b)(6) or (c)(3) of this section. If a debt instrument is issued (or treated as issued under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in §1.108(i)–3(a), some or all of the deductions for OID with respect to such debt instrument must be deferred during the deferral period. The aggregate amount of OID deductions deferred during the deferral period is generally allowed as a deduction ratably over the inclusion period, or earlier upon the occurrence of any acceleration event described in paragraph (b)(6) or (c)(3) of this section. Paragraph (b) of this section provides rules that apply to partnerships. Paragraph (c) of this section provides rules that apply to S corporations. Paragraph (d) of this section provides general rules that apply to partnerships and S corporations. Paragraph (e) of this section provides election procedures and reporting requirements. Paragraph (f) of this section contains the effective/applicability date. See §1.108(i)–0(a) for definitions that apply to this section.

(b) *Specific rules applicable to partnerships*—(1) *Allocation of COD income and partner's deferred amounts.* An electing partnership that defers any portion of COD income realized from a reacquisition of an applicable debt instrument under section 108(i) must allocate all of the COD income with respect to the applicable debt instrument to its direct partners that are partners in the electing partnership immediately before the reacquisition in the manner in which the income would be included in the distributive shares of the partners under section 704 and the regulations under section 704, including §1.704–1(b)(2)(iii), without regard to section

108(i). The electing partnership may determine, in any manner, the portion, if any, of a partner's COD income amount with respect to an applicable debt instrument that is the deferred amount, and the portion, if any, that is the included amount. However, no partner's deferred amount with respect to an applicable debt instrument may exceed that partner's COD income amount with respect to such applicable debt instrument, and the aggregate amount of the partners' COD income amounts and deferred amounts with respect to each applicable debt instrument must equal the electing partnership's COD income amount and deferred amount, respectively, with respect to each such applicable debt instrument.

(2) *Basis adjustments and capital account maintenance*—(i) *Basis adjustments*. The adjusted basis of a partner's interest in a partnership is not increased under section 705(a)(1) by the partner's deferred amount in the taxable year of the reacquisition. The adjusted basis of a partner's interest in a partnership is not decreased under section 705(a)(2) by the partner's share of any deferred OID deduction in the taxable year in which the deferred OID accrues. The adjusted basis of a partner's interest in a partnership is adjusted under section 705(a) by the partner's share of the electing partnership's deferred items for the taxable year in which the partner takes into account such deferred items under this section.

(ii) *Capital account maintenance*. For purposes of maintaining a partner's capital account under §1.704–1(b)(2)(iv) and notwithstanding §1.704–1(b)(2)(iv)(*n*), the capital account of a partner of a partnership is adjusted under §1.704–1(b)(2)(iv) for a partner's share of an electing partnership's deferred items as if no election under section 108(i) were made.

(3) *Deferred section 752 amount*—(i) *In general*. An electing partnership shall determine, for each of its direct partners with a deferred amount, the partner's deferred section 752 amount, if any, with respect to an applicable debt instrument. A partner's deferred section 752 amount with respect to an applicable debt instrument equals the decrease in the partner's share of a partnership liability under section 752(b) resulting from the reacquisition of the applicable debt instrument that is not treated as a current distribution of money under section 752(b) by reason of section 108(i)(6) (deferred section 752 amount). A partner's deferred section 752 amount is treated as a distribution of money by the partnership to the partner under section 752(b) at the same time and, to the extent remaining, in the same amount as the partner recognizes the deferred amount with respect to the applicable debt instrument.

(ii) *Electing partnership's computation of a partner's deferred section 752 amount*. To compute a partner's deferred section 752 amount, the electing partnership must first determine the amount of gain that its direct partner would recognize in the taxable year of a reacquisition under section 731 as a result of the reacquisition of one or more applicable debt instruments during the taxable year absent the deferral provided in the second sentence of section 108(i)(6) (the section 108(i)(6) deferral). If a direct partner of an electing partnership would not recognize any gain under section 731 as a result of the reacquisition of one or more applicable debt instruments during the taxable year absent the section 108(i)(6) deferral, the partner will not have a deferred section 752 amount with respect to any applicable debt instrument that is reacquired during the taxable year. If a direct partner of an electing partnership would recognize gain under section 731 as a result of the reacquisition of one or more applicable debt instruments during the taxable year absent the section 108(i)(6) deferral, the partner's deferred section 752 amount for all applicable debt instruments that are reacquired during the taxable year is equal to the lesser of the partner's aggregate deferred amounts from the electing partnership for all applicable debt instruments reacquired during the taxable year, or the gain that the partner would recognize in the taxable year of the reacquisitions under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral. In determining the amount of gain that the direct partner would recognize in the taxable year of a reacquisition under section 731 as a result of the reacquisition of one or more applicable debt instruments during the taxable year absent the section 108(i)(6) deferral, the rule under §1.731–1(a)(1)(ii) applies to any deemed distribution of money under section 752(b) resulting from a decrease in the partner's share of a reacquired applicable debt instrument that is treated as an advance or drawing of money. The amount of any deemed distribution of money under section 752(b) resulting from a decrease in the partner's share of a reacquired applicable debt instrument that is treated as an advance or drawing of money under §1.731–1(a)(1)(ii) is determined as if no COD income resulting from the reacquisition of the applicable debt instrument is deferred under section 108(i).

(iii) *Multiple section 108(i) elections.* If a direct partner of an electing partnership has a deferred section 752 amount under paragraph (b)(3)(ii) of this section for the taxable year of a reacquisition, and the partner has a deferred amount with respect to more than one applicable debt instrument from the electing partnership for which a section 108(i) election is made in that taxable year, the partner's deferred section 752 amount with respect to each such applicable debt instrument equals the partner's deferred section 752 amount as determined under paragraph (b)(3)(ii) of this section, multiplied by a ratio, the numerator of which is the partner's deferred amount with respect to such applicable debt instrument, and the denominator of which is the partner's aggregate deferred amounts from the electing partnership for all applicable debt instruments reacquired during the taxable year.

(iv) *Electing partnership's request for information.* At the request of an electing partnership, each direct partner of the electing partnership that has a deferred amount with respect to such partnership must provide to the electing partnership a written statement containing information requested by the partnership that is necessary to determine the partner's deferred section 752 amount (such as the partner's adjusted basis in the partner's interest in the electing partnership). The written statement must be signed under penalties of perjury and provided to the requesting partnership within 30 days of the date of the request by the electing partnership.

(v) *Examples.* The following examples illustrate the rules under paragraph (b)(3) of this section:

*Example 1.* (i) A and B each hold a 50 percent interest in Partnership, a calendar-year partnership. As of January 1, 2009, A and B each have an adjusted basis of $50 in their partnership interests. Partnership has two applicable debt instruments outstanding, debt one of $300 and debt two of $200. A and B share equally in the debt for section 752(b) purposes. On March 1, 2009, debt one is cancelled and Partnership realizes $300 of COD income. On December 1, 2009, debt two is cancelled and Partnership realizes $200 of COD income. The Partnership has no other income or loss items for 2009. A and B are each allocated $150 of COD income from debt one and $100 of COD income from debt two. Partnership makes an election under section 108(i) to defer $225 of the $300 of COD income realized from the reacquisition of debt one, $150 of which is A's deferred amount, and $75 of which is B's deferred amount. Partnership also makes an election under section 108(i) to defer $125 of the $200 of COD income realized from the reacquisition of debt two, $100 of which is A's deferred amount, and $25 of which is B's deferred amount. A has no included amount for either debt. B has an included amount of $75 with respect to debt one and an included amount of $75 with respect to debt two for 2009.

(ii) Under paragraph (b)(3)(ii) of this section, the amount of gain that A would recognize under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral is $200. Thus, A's deferred section 752 amount with respect to debt one and debt two equals $200 (the lesser of A's aggregate deferred amounts with respect to debt one and debt two of $250, or gain that A would recognize under section 731 in 2009, as a result of the reacquisitions absent the section 108(i)(6) deferral, of $200). Under paragraph (b)(3)(iii) of this section, $120 of A's $200 deferred section 752 amount relates to debt one ($\$200 \times \$150/\$250$) and $80 relates to debt two ($\$200 \times \$100/\$250$).

(iii) Under paragraph (b)(3)(ii) of this section, the amount of gain that B would recognize under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral is $50. Thus, B's deferred section 752 amount with respect to debt one and debt two equals $50 (the lesser of B's aggregate deferred amounts with respect to debt one and debt two of $100, or gain that B would recognize under section 731 in 2009, as a result of the reacquisitions absent the section 108(i)(6) deferral, of $50). Under paragraph (b)(3)(iii) of this section, $37.50 of B's $50 deferred section 752 amount relates to debt one ($50 × $75/$100) and $12.50 relates to debt two ($50 × $25/$100).

(iv) A will recognize $50 of deferred COD income ($30 with respect to debt one and $20 with respect to debt two) in each of the five taxable years of the inclusion period, provided there are no earlier acceleration events under paragraph (b)(6) of this section. Under paragraph (b)(3)(i) of this section, A will be treated as receiving a $30 deemed distribution under section 752(b) with respect to debt one and a $20 deemed distribution with respect to debt two in each of the first, second, third, and fourth taxable years of the inclusion period. A will not have any remaining deferred section 752 amounts in the fifth taxable year of the inclusion period.

(v) B will recognize $20 of deferred COD income ($15 with respect to debt one and $5 with respect to debt two) in each of the five taxable years of the inclusion period, provided there are no earlier acceleration events under paragraph (b)(6) of this section. Under paragraph (b)(3)(i) of this section, B will be treated as receiving a $15 deemed distribution under section 752(b) with respect to debt one and a $5 deemed distribution with respect to debt two in the first and second taxable year of the inclusion period, and a $7.50 deemed distribution under section 752(b) with respect to debt one ($10 × $15/$20) and a $2.50 deemed distribution with respect to debt two ($10 × $5/$20) in the third taxable year of the inclusion period. B will not have any remaining deferred section 752 amounts in the fourth and fifth taxable years of the inclusion period.

*Example 2.* (i) The facts are the same as in *Example 1*, except that Partnership has gross income for the year (including the $500 of COD income) of $700 and other separately stated losses of $500. A's and B's distributive share of each item is 50 percent.

(ii) In determining the amount of gain that A would recognize under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral, Partnership first increases A's $50 adjusted basis in his interest in Partnership by A's distributive share of Partnership income (other than the deferred amounts relating to debt one and debt two) of $100, and then decreases A's adjusted basis in Partnership by deemed distributions under section 752(b) of $250 and, thereafter, by A's distributive share of Partnership losses of $250, but only to the extent that A's basis is not reduced below zero. Under paragraph (b)(3)(ii) of this section, the amount of gain that A would recognize under section 731 as a result of the reacquisitions absent section 108(i)(6) deferral is $100. Thus, A's deferred section 752 amount with respect to debt one and debt two equals $100 (the lesser of A's aggregate deferred amounts with respect to debt one and debt two of $250, or gain that A would recognize under section 731 as a result of the reacquisitions absent the deferral section 108(i)(6) deferral of $100). Under paragraph (b)(3)(iii) of this section, A's deferred section 752 amount with respect to debt one is $60 ($100 × $150/$250), and A's deferred section 752 amount with respect to debt two is $40 ($100 × $100/$250). A's $250 of Partnership losses are suspended under section 704(d).

(iii) In determining the amount of gain that B would recognize under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral, Partnership first increases B's $50 adjusted basis in his interest in Partnership by B's distributive share of Partnership income (other than the deferred amounts relating to debt one and debt two) of $250 ($100 other income plus $150 included amount with respect to debt one and debt two), and then decreases B's adjusted basis in Partnership by deemed distributions under section 752(b) of $250 and, thereafter, by B's distributive share of Partnership losses of $250, but only to the extent that B's basis is not reduced below zero. Under paragraph (b)(3)(ii) of this section, B would not recognize any gain under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral. Thus, B has no deferred section 752 amount with respect to either debt one or debt two. B may deduct his distributive share of Partnership losses to the extent of $50, with the remaining $200 suspended under section 704(d).

(4) *Tiered partnerships*—(i) *In general.* If a partnership (upper-tier partnership) is a direct or indirect partner of an electing partnership and directly or indirectly receives an allocation of a COD income amount from the electing partnership, all or a portion of which is deferred under section 108(i), the upper-tier partnership must allocate its COD income amount to its partners that are partners in the upper-tier partnership immediately before the reacquisition in the manner in which the income would be included in the distributive shares of the partners under section 704 and the regulations under section 704, including § 1.704–1(b)(2)(iii), without regard to section 108(i). The upper-tier partnership may determine, in any manner, the portion, if any, of a partner's COD income amount with respect to an applicable debt instrument that is the deferred amount, and the portion, if any, that is the included amount. However, no partner's deferred amount with respect to an applicable debt instrument may exceed that partner's COD income amount with respect to such applicable debt instrument,

and the aggregate amount of the partners' COD income amounts and deferred amounts with respect to each applicable debt instrument must equal the upper-tier partnership's COD income amount and deferred amount, respectively, with respect to each such applicable debt instrument.

(ii) *Deferred section 752 amount.* The computation of a partner's deferred section 752 amount, as described in paragraph (b)(3)(ii) of this section, is calculated only for direct partners of the electing partnership. An upper-tier partnership's deferred section 752 amount with respect to an applicable debt instrument of the electing partnership is allocated only to those partners of the upper-tier partnership that have a deferred amount with respect to that applicable debt instrument, and in proportion to such partners' share of the upper-tier partnership's deferred amount with respect to that applicable debt instrument. A partner's share of the upper-tier partnership's deferred section 752 amount with respect to an applicable debt instrument must not exceed that partner's share of the upper-tier partnership's deferred amount with respect to the applicable debt instrument to which the deferred section 752 amount relates. The deferred section 752 amount of a partner of an upper-tier partnership is treated as a distribution of money by the upper-tier partnership to the partner under section 752(b), at the same time and, to the extent remaining, in the same amount as the partner recognizes the deferred amount with respect to the applicable debt instrument.

(iii) *Examples.* The following examples illustrate the rules under paragraph (b)(4) of this section:

*Example 1.* (i) PRS, a calendar-year partnership, has two equal partners, A, an individual, and XYZ, a partnership. As of January 1, 2009, A and XYZ each have an adjusted basis of $50 in their partnership interests. PRS has a $500 applicable debt instrument outstanding. On June 1, 2009, the creditor agrees to cancel the $500 indebtedness. PRS realizes $500 of COD income as a result of the reacquisition. PRS has no other income or loss items for 2009. PRS makes an election under section 108(i) to defer $200 of the $500 of COD income. PRS allocates the $500 of COD income equally between its partners ($250 each). PRS determines that, for each partner, $100 of the COD income amount is the deferred amount, and $150 is the included amount. For 2009, each of A's and XYZ's share of the decrease in PRS's reacquired applicable debt instrument is $250.

(ii) XYZ has two equal partners, individuals X and Y. X and Y share equally in XYZ's liabilities. XYZ allocates the $250 COD income amount from PRS equally between X and Y ($125 each). XYZ determines that X has a deferred amount of $100 and an included amount of $25. All $125 of Y's COD income amount is Y's included amount. For 2009, each of X's and Y's share of XYZ's $250 decrease in liability with respect to the reacquired applicable debt instrument of PRS is $125.

(iii) Under paragraph (b)(3)(ii) of this section, PRS determines that XYZ has a deferred section 752 amount of $50. Therefore, for 2009, of XYZ's $250 share of the decrease in PRS's reacquired applicable debt instrument, $200 is treated as a deemed distribution under section 752(b) and $50 is the deferred section 752 amount.

(iv) Under paragraph (b)(4)(ii) of this section, none of XYZ's $50 deferred section 752 amount is allocated to Y because Y does not have a deferred amount with respect to the reacquired applicable debt interest. XYZ's entire $50 of deferred section 752 amount is allocated to X. Therefore, of X's $125 share of the XYZ's decrease in liability with respect to the reacquired applicable debt instrument of PRS, $75 is treated as a deemed distribution under section 752(b) and $50 is X's deferred section 752 amount. Y's $125 share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument of PRS is treated as a deemed distribution under section 752(b) and none is a deferred section 752 amount.

*Example 2.* (i) The facts are the same as in *Example 1*, except for the following: XYZ has three partners, X, Y, and Z. The profits and losses of XYZ are shared 25 percent by X, 25 percent by Y, and 50 percent by Z. XYZ allocates its $250 COD income amount from PRS $62.50 to each of X and Y, and $125 to Z. XYZ determines that X has a deferred amount of $50 and an included amount of $12.50, Y has a deferred amount of $0 and an included amount of $62.50, and Z has a deferred amount of $50 and an included amount of $75 with respect to the applicable debt instrument. X's, Y's, and Z's share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument of PRS is $62.50, $62.50 and $125, respectively.

(ii) Under paragraph (b)(4)(ii) of this section, none of XYZ's $50 deferred section 752 amount is allocated to Y because Y does not have a deferred amount with respect to the reacquired applicable debt instrument. XYZ's $50 deferred section 752 amount is allocated to X and Z in proportion to X's and Z's share of XYZ's deferred amount, or $25 each ($50 × ($50/$100)). Therefore, of X's $62.50 share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument, $37.50 is treated as a deemed distribution under section 752(b) and $25 is X's deferred section 752 amount. All of Y's $62.50 share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument is treated as a deemed distribution under section 752(b). Of Z's $125 share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument, $100 is treated as a deemed distribution under section 752(b) and $25 is Z's deferred section 752 amount.

(5) *S corporation partner*—(i) *In general*. If an S corporation partner has a deferred amount with respect to an applicable debt instrument of an electing partnership, such deferred amount is shared pro rata only among those shareholders that are shareholders of the S corporation partner immediately before the reacquisition of the applicable debt instrument.

(ii) *Basis adjustments*. The adjusted basis of a shareholder's stock in an S corporation partner is not increased under section 1367(a)(1) by the shareholder's share of the S corporation partner's deferred amount in the taxable year of the reacquisition. The adjusted basis of a shareholder's stock in an S corporation partner is not decreased under section 1367(a)(2) by the shareholder's share of the S corporation partner's deferred OID deduction in the taxable year in which the deferred OID accrues. The adjusted basis of a shareholder's stock in an S corporation partner is adjusted under section 1367(a) by the shareholder's share of the S corporation partner's share of the electing partnership's deferred items for the taxable year in which the shareholder takes into account its share of such deferred items under this section.

(iii) *Accumulated adjustments account*. The accumulated adjustments account (AAA), as defined in section 1368(e)(1), of an S corporation partner that has a deferred amount with respect to an applicable debt instrument of an electing partnership is not increased by its deferred amount in the taxable year of the reacquisition. The AAA of an S corporation partner is not decreased by its share of any deferred OID deduction in the taxable year in which the deferred OID accrues. The AAA of an S corporation partner is adjusted under section 1368(e) by a shareholder's share of the S corporation partner's share of the electing partnership's deferred items for the S period (as defined in section 1368(e)(2)) in which the shareholder of the S corporation partner takes into account its share of the deferred items under this section.

(6) *Acceleration of deferred items*—(i) *Electing partnership-level events*

(A) *General rules*. Except as provided in paragraph (b)(6)(iii) of this section, a direct or indirect partner's share of an electing partnership's deferred items is accelerated and must be taken into account by such partner—

(*1*) In the taxable year in which the electing partnership liquidates;

(*2*) In the taxable year in which the electing partnership sells, exchanges, transfers (including contributions and distributions), or gifts substantially all of its assets;

(*3*) In the taxable year in which the electing partnership ceases doing business; or

(*4*) In the taxable year that includes the day before the day on which the electing partnership files a petition in a title 11 or similar case.

(B) *Substantially all requirement*. For purposes of this paragraph (b)(6), substantially all of a partnership's assets means assets representing at least 90 percent of the fair market value of the net assets, and at least 70 percent of the fair market value of the gross assets, held by the partnership immediately prior to the sale, exchange, transfer, or gift. For purposes of applying the rule in paragraph (b)(6)(i)(A)(*2*) of this section, a sale, exchange, transfer, or gift by any direct or indirect lower-tier partnership of the electing partnership (lower-tier partnership) of all or part of its assets is not treated as a sale, exchange, transfer, or gift of the assets of any partnership that holds, directly or indirectly, an interest in such lower-tier partnership. However, for purposes of applying the rule in paragraph (b)(6)(i)(A)(*2*) of this section, a sale, exchange, transfer, or gift of substantially all of the assets of a transferee partnership (as described in paragraph (b)(6)(iii)(A)(*1*) of this section), or of a lower-tier partnership that received assets of the electing partnership from a transferee partnership or another lower-tier partnership in a transaction governed all or in part by section 721, is treated as a sale, exchange, transfer, or gift by the holder of an interest in such transferee partnership or lower-tier partnership of its entire interest in that transferee partnership or lower-tier partnership.

(ii) *Direct or indirect partner-level events*—(A) *General rules*. Except as provided in paragraph (b)(6)(iii) of this section, a direct or indirect partner's share of an electing partnership's deferred items with respect to a separate interest is accelerated and must be taken into account by such partner in the taxable year in which—

(*1*) The partner dies or liquidates;

(*2*) The partner sells, exchanges (including redemptions treated as exchanges under section 302), transfers (including contributions and distributions), or gifts (including transfers treated as gifts under section 1041) all or a portion of its separate interest;

(*3*) The partner's separate interest is redeemed within the meaning of paragraph (b)(6)(ii)(B)(*2*) of this section; or

(*4*) The partner abandons its separate interest.

(B) *Meaning of terms; special rules*—(*1*) *Partial transfers*. For purposes of paragraph (b)(6)(ii)(A)(*2*) of this section, if a partner sells, exchanges (including redemptions treated as exchanges under section 302), transfers (including contributions and distributions), or gifts (including transfers treated as gifts under section 1041) a portion of its separate interest, such partner's share of the electing partnership's deferred items with respect to the separate interest proportionate to the separate interest sold, exchanged, transferred, or gifted is accelerated and must be taken into account by such partner.

(*2*) *Redemptions*. For purposes of paragraph (b)(6)(ii)(A)(*3*) of this section, a partner's separate interest is redeemed if the partner receives a distribution of cash and/or property in complete liquidation of such separate interest.

(*3*) *S corporation partners*. In addition to the rules in paragraphs (b)(6)(i) and (ii) of this section, an S corporation partner's share of the electing partnership's deferred items is accelerated and the shareholders of the S corporation partner must take into account their respective shares of the S corporation partner's share of the electing partnership's deferred items in the taxable year in which the S corporation partner's election under section 1362(a) terminates.

(*4*) *C corporation partners*. In addition to the rules in paragraphs (b)(6)(i), (ii), and (iii) of this section, the acceleration rules in §1.108(i)–1(b) and the earnings and profits rules in §1.108(i)–1(d) apply to partners that are electing corporations.

(iii) *Events not constituting acceleration*. Notwithstanding the rules in paragraphs (b)(6)(i) and (ii) of this section, a direct or indirect partner's share of an electing partnership's deferred items with respect to a separate interest is not accelerated by any of the events described in this paragraph (b)(6)(iii).

(A) *Section 721 contributions*—(*1*) *Electing partnership contributions*. A direct or indirect partner's share of an electing partnership's deferred items is not accelerated if the electing partnership contributes all or a portion of its assets in a transaction governed all or in part by section 721(a) to another partnership (transferee partnership) in exchange for an interest in the transferee partnership provided that the electing partnership does not terminate under section 708(b)(1)(A) or transfer its assets and liabilities in a transaction described in section 708(b)(2)(A) or section 708(b)(2)(B). See paragraph (b)(6)(iii)(D) of this section for transactions governed by section 708(b)(2)(A). Notwithstanding the rules in this paragraph (b)(6)(iii)(A)(*1*), the rules in paragraphs (b)(6)(i)(A) and (b)(6)(ii)(A) of this section apply to any part of the transaction to which section 721(a) does not apply.

(*2*) *Partner contributions*. A direct or indirect partner's share of an electing partnership's deferred items with respect to a separate interest is not accelerated if the holder of such interest (contributing partner) contributes its entire separate interest (contributed separate interest) in a transaction governed all or in part by section 721(a) to another partnership (transferee partnership) in exchange for an interest in the transferee partnership provided that the partnership in which the separate interest is held does not terminate under section 708(b)(1)(A) or transfer its assets and liabilities in a transaction described in section 708(b)(2)(A) or section 708(b)(2)(B). See paragraph (b)(6)(iii)(D) of this section for transactions governed by section 708(b)(2)(A). The transferee partnership becomes subject to section 108(i), including all reporting requirements under this section, with respect to the contributing partner's share of the electing partnership's deferred items associated with the contributed separate interest. The transferee partnership must allocate and report the share of the electing partnership's deferred items that is associated with the contributed separate interest to the contributing partner to the same extent that such share of the electing partnership's deferred items would have been allocated and reported to the contributing partner in the absence of such contribution. Notwithstanding the rules in this paragraph (b)(6)(iii)(A)(*2*), the rules in paragraph (b)(6)(ii)(A) of this section apply to any part of the transaction to which section 721(a) does not apply.

(B) *Section 1031 exchanges.* A direct or indirect partner's share of the electing partnership's deferred items is not accelerated if the electing partnership transfers property held for productive use in a trade or business or for investment in exchange for property of like kind which is to be held either for productive use in a trade or business or for investment in a transaction to which section 1031(a)(1) applies. Notwithstanding the rules in this paragraph (b)(6)(iii)(B), to the extent the electing partnership receives money or other property which does not meet the requirements of section 1031(a) (boot) in the exchange, a proportionate amount of the property transferred by the electing partnership equal to the proportion of the boot to the total consideration received in the exchange shall be treated as sold for purposes of paragraph (b)(6)(i)(A)(*2*) of this section.

(C) *Section 708(b)(1)(B) terminations.* A direct or indirect partner's share of the deferred items of an electing partnership with respect to a separate interest is not accelerated if the electing partnership or a partnership that is a direct or indirect partner of the electing partnership terminates under section 708(b)(1)(B). Notwithstanding the rules in this paragraph (b)(6)(iii)(C), the rules in paragraph (b)(6)(ii)(A) of this section apply to the event that causes the termination under section 708(b)(1)(B) to the extent not otherwise excepted under paragraph (b)(6)(iii) of this section.

(D) *Section 708(b)(2)(A) mergers or consolidations.* A direct or indirect partner's share of the deferred items of an electing partnership with respect to a separate interest is not accelerated if the partnership in which the separate interest is held (the merger transaction partnership) merges into or consolidates with another partnership in a transaction to which section 708(b)(2)(A) applies. The resulting partnership or new partnership, as determined under §1.708–1(c)(1), becomes subject to section 108(i), including all reporting requirements under this section, to the same extent that the merger transaction partnership was so subject prior to the transaction, and must allocate and report any merger transaction partnership's deferred items to the same extent and to the same partners that the merger transaction partnership allocated and reported such items prior to such transaction. Notwithstanding the rules in this paragraph (b)(6)(iii)(D), the rules in paragraphs (b)(6)(i)(A)(*2*) and (b)(6)(ii)(A)(*2*) of this section apply to that portion of the transaction that is treated as a sale, and the rules of (b)(6)(ii)(A)(*3*) apply if, as part of the transaction, the partner's separate interest is redeemed and the partner does not receive an interest in the resulting partnership with respect to such separate interest.

(E) *Certain distributions of separate interests.* If a partnership (upper-tier partnership) that is a direct or indirect partner of an electing partnership distributes its entire separate interest (distributed separate interest) to one or more of its partners (distributee partners) that have a share of the electing partnership's deferred items from upper-tier partnership with respect to the distributed separate interest, the distributee partners' shares of the electing partnership's deferred items with respect to such distributed separate interest are not accelerated. The partnership, the separate interest in which was distributed, must allocate and report the share of the electing partnership's deferred items associated with the distributed separate interest only to such distributee partners that had a share of the electing partnership's deferred items from the upper-tier partnership with respect to the distributed separate interest prior to the distribution. This paragraph (b)(6)(iii)(E) does not apply if the electing partnership terminates under section 708(b)(1)(A).

(F) *Section 381 transactions.* A C corporation partner's share of an electing partnership's deferred items is not accelerated if, as part of a transaction described in paragraph (b)(6)(ii)(A) of this section, the assets of the C corporation partner are acquired by another C corporation (acquiring C corporation) in a transaction that is treated, under §1.108(i)–1(b)(2)(ii)(B), as a transaction to which section 381(a) applies. An S corporation partner's share of an electing partnership's deferred items is not accelerated if, as part of a transaction described in paragraph (b)(6)(ii)(A) of this section, the assets of the S corporation partner are acquired by another S corporation (acquiring S corporation) in a transaction to which section 381(a) applies. In such cases, the acquiring C corporation or acquiring S corporation, as the case may be, succeeds to the C corporation partner's or the S corporation partner's remaining share of the electing partnership's deferred items and becomes subject to section 108(i), including all reporting requirements under this section, as if the acquiring C corporation or acquiring S corporation were the C corporation partner or the S corporation partner, respectively. The acquiring S corporation must allocate and report the S corporation partner's deferred items to the same extent as the S corporation partner would have been required to allocate and report those deferred items, and only to those shareholders of the S corporation partner who had a share of the S corporation partner's deferred items from the electing partnership prior to the transaction. This paragraph (b)(6)(iii)(F) does not apply if the electing partnership terminates under section 708(b)(1)(A).

(G) *Intercompany transfers.* A C corporation partner's share of an electing partnership's deferred items is not accelerated if, as part of a transaction described in paragraph (b)(6)(ii)(A) of this section, the C corporation partner transfers its entire separate interest in an intercompany transaction, as described in §1.1502–13(b)(1)(i), and the electing partnership does not terminate under section 708(b)(1)(A) as a result of the intercompany transaction.

(H) *Retirement of a debt instrument.* See §1.108(i)–3(c)(1) for rules regarding the retirement of a debt instrument that is subject to section 108(i).

(I) *Other non-acceleration events.* A direct or indirect partner's share of an electing partnership's deferred items is not accelerated with respect to any transaction if the Commissioner makes a determination by published guidance that such transaction is not an acceleration event under the rules of this paragraph (b)(6).

(iv) *Related partnerships.* A direct or indirect partner's share of a related partnership's deferred OID deduction (as determined in paragraph (d)(2) of this section) that has not previously been taken into account is accelerated and taken into account by the direct or indirect partner in the taxable year in which, and to the extent that, the deferred COD income to which the related partnership's deferred OID deduction relates is taken into account by the electing entity or its owners.

(v) *Examples.* The following examples illustrate the rules under this paragraph (b)(6):

*Example 1 Meaning of "separate interest."* (i) Electing partnership (EP) has three partners, MT1, MT2, and UT, each of which is a partnership. The partners of MT1 are X and UT. The partners of MT2 are Y, UT, and B. The partners of UT are A, B, and C. In addition to their interests in the partnerships noted, MT1, MT2, and UT own other assets.

(ii) Within the meaning of paragraph (a)(29) of §1.108(i)–0, A and C each hold one separate interest (their interests in UT), B holds two separate interests (its interests in UT and MT2), UT holds three separate interests (its interests in MT1, MT2, and EP), MT1 and MT2 each hold one separate interest (their interests in EP), and X and Y each hold one separate interest (their interests in

MT1 and MT2, respectively) with respect to EP.

*Example 2 Distributions of separate interests in an electing partnership*. (i) The facts are the same as in *Example 1*, except that A, as a direct partner of UT, has a share of EP's deferred items with respect to UT's interests in MT1 and EP. A does not have a share of EP's deferred items with respect to UT's interest in MT2. B, as a direct partner of UT, has a share of EP's deferred items with respect to UT's interest in MT1 and MT2, but not with respect to UT's interest in EP. B also has a share of EP's deferred items with respect to its separate interest in MT2. C does not have any share of EP's deferred items with respect to UT's interest in MT1, MT2, or EP.

(ii) UT distributes 40 percent of its separate interest in MT1 to A in redemption of A's interest in UT. Under paragraphs (b)(6)(ii)(A)(*2*) and (b)(6)(ii)(B)(*1*) of this section, a portion of UT's interest in MT1 has been transferred and a corresponding portion (40 percent) of UT's share of EP's deferred items from MT1 is accelerated. Thus, 40 percent of A's and B's share of EP's deferred items from UT with respect to UT's interest in MT1 is accelerated. Further, because A's interest in UT is redeemed within the meaning of paragraph (b)(6)(ii)(B)(*2*) of this section, all of A's shares of EP's deferred items from UT are accelerated under paragraph (b)(6)(ii)(A)(*3*) of this section. UT continues to allocate and report to B its remaining share of EP's deferred items from its separate interest in MT1 that was not distributed to A.

(iii) UT distributes its entire separate interest in MT1 to B (other than in redemption of B's interest in UT). Under paragraph (b)(6)(ii)(A)(*2*) of this section, UT's share of EP's deferred items from MT1 would be accelerated. However, because UT distributes its entire separate interest in MT1 to B, B's share of EP's deferred items from UT with respect to UT's separate interest in MT1 is not accelerated under paragraph (b)(6)(iii)(E) of this section. MT1 allocates and reports to B B's share of EP's deferred items from UT's separate interest in MT1 that was distributed to B.

(iv) UT distributes its entire separate interest in MT1 to A and B (other than in redemption of their interests in UT). Under paragraph (b)(6)(iii)(E) of this section, none of A's or B's shares of EP's deferred items from UT with respect to UT's separate interest in MT1 is accelerated, and MT1 allocates and reports to A and B their respective share of EP's deferred items from UT's separate interest in MT1 that was distributed to A and B.

*Example 3 Partial sale of interest by an indirect partner*. (i) Individual A holds a 50 percent partnership interest in UTP, a partnership that holds a 50 percent interest in EP, a partnership that makes an election to defer COD income under section 108(i). A's share of UTP's deferred amount with respect to EP's election under section 108(i) is $100. During a taxable year within the deferral period, A sells 25 percent of his partnership interest in UTP to an unrelated third party.

(ii) Under paragraphs (b)(6)(ii)(A)(*2*) and (b)(6)(ii)(B)(*1*) of this section, 25 percent of A's $100 deferred amount is accelerated as a result of A's partial sale of his interest in UTP. Thus, A must recognize $25 of his deferred amount in the taxable year of the sale. A's remaining deferred amount is $75.

*Example 4 Section 708(b)(1)(B) termination of electing partnership*. (i) A and B are equal partners in partnership AB. On January 1, 2009, AB reacquires an applicable debt instrument and makes an election under section 108(i) to defer $400 of COD income. A and B each have a deferred amount with respect to the applicable debt instrument of $200. On January 1, 2010, A sells its entire 50 percent interest in AB to C in a transfer that terminates the partnership under section 708(b)(1)(B).

(ii) Under paragraph (b)(6)(iii)(C) of this section, the technical termination of AB under section 708(b)(1)(B) does not cause A's or B's shares of AB's deferred items to be accelerated. However, A's $200 deferred amount is accelerated under paragraph (b)(6)(ii)(A)(*2*) of this section as a result of the sale.

*Example 5 Section 708(b)(2)(A) mergers*. (i) A, B, and C are equal partners in partnership X, which has made an election under section 108(i) to defer $150 of COD income. The fair market value of each interest in partnership X is $100. A, B, and C each has a deferred amount of $50 with respect to partnership X's election under section 108(i). E, F, and G are partners in partnership Y. Partnership X and partnership Y merge in a taxable year during the deferral period of partnership X's election under section 108(i). Under section 708(b)(2)(A), the resulting partnership is considered a continuation of partnership Y and partnership X is considered terminated. Under state law, partnerships X and Y undertake the assets-over form of §1.708–1(c)(3)(i) to accomplish the merger. C does not want to become a partner in partnership Y, and partnership X does not have the resources to redeem C's interest before the merger. C, partnership X, and partnership Y enter into a merger agreement that satisfies the requirements of §1.708–1(c)(4) and specifies that partnership Y will purchase C's interest in partnership X for $100 before the merger, and as part of the agreement, C consents to treat the transaction in a manner that is consistent with the agreement. As part of the merger, partnership X receives from partnership Y $100 (which will be distributed to C immediately before the merger), $100 (which will be distributed equally to A and B ($50 each)), and interests in partnership Y with a value of $100 (which will be distributed equally to A and B) in exchange for partnership X's assets and liabilities.

(ii) Under the general rule of paragraph (b)(6)(iii)(D) of this section, and except as provided below, the deferred items of partnership X are not accelerated as a result of the merger with partnership Y. Partnership Y, the resulting partnership that is considered the continuation of partnership X, becomes subject to section 108(i), including all reporting requirements under section 108(i), to the same extent that partnership X was subject to such rules. Under paragraph (b)(6)(iii)(D) of this section, partnership Y must allocate and report partnership X's deferred items to A and B in the same manner as partnership X had prior to the merger transaction.

(iii) Under §1.708–1(c)(4), C is treated as selling its interest in partnership X immediately before the merger. As a result, C's $50 deferred amount is accelerated under paragraph (b)(6)(ii)(A)(*2*) of this section.

(iv) Under section 707(a)(2)(B), partnership X is deemed to have sold a portion of its assets to partnership Y. Because partnership X is not treated as selling substantially all of its assets under paragraph (b)(6)(i)(B) of this section, A's and B's deferred amounts are not accelerated under paragraph (b)(6)(i)(A)(*2*) of this section.

(v) Because A's and B's interests in partnership X are redeemed within the meaning of paragraph (b)(6)(ii)(B)(*2*) of this section, all of their shares of partnership X's deferred items would be accelerated under paragraph (b)(6)(ii)(A)(*3*). However, because they receive an interest in partnership Y in the merger, none of A's and B's share of partnership X's deferred items is accelerated.

(7) *Withholding under section 1446*. See section 1446 regarding withholding by a partnership on a foreign partner's share of income effectively connected with a U.S. trade or business.

(c) *Specific rules applicable to S corporations*—(1) *Deferred COD income*. An electing S corporation's COD income deferred under section 108(i) (an S corporation's deferred COD income) is shared pro rata among those shareholders that are shareholders of the electing S corporation immediately before the reacquisition of the applicable debt instrument. Any COD income deferred under section 108(i) is taken into account under section 1366(a) by those shareholders in the inclusion period, or earlier upon the occurrence of an acceleration event described in paragraph (c)(3) of this section.

(2) *Basis adjustments and accumulated adjustments account*—(i) *Basis adjustments*. The adjusted basis of a shareholder's stock in an electing S corporation is not increased under section 1367(a)(1) by the shareholder's share of the S corporation's deferred COD income in the taxable year of the reacquisition. The adjusted basis of a shareholder's stock in an electing S corporation or a related S corporation is not decreased under section 1367(a)(2) by the shareholder's share of the S corporation's deferred OID deduction in the taxable year in which the deferred OID accrues. The adjusted basis of a shareholder's stock in an electing S corporation or a related S corporation is adjusted under section 1367(a) by the shareholder's share of the S corporation's deferred items for the taxable year in which the shareholder takes into account its share of the deferred items under this section.

(ii) *Accumulated adjustments account*. The AAA of an electing S corporation is not increased by the S corporation's deferred COD income in the taxable year of a reacquisition. The AAA of an electing S corporation or a related S corporation is not decreased by the S corporation's deferred OID deduction in the taxable year in which the deferred OID accrues. The AAA of an electing S corporation or a related S corporation is adjusted under section 1368(e) by a shareholder's share of the S corporation's deferred items for the S period (as defined in section 1368(e)(2)) in which a shareholder of the S corporation takes into account its share of the deferred items under this section.

(3) *Acceleration of deferred items*—(i) *Electing S corporation-level events*—(A) *General rules*. Except as provided in paragraph (c)(3)(iii) of this section, a shareholder's share of an electing S corporation's deferred items is accelerated and must be taken into account by such shareholder—

(*1*) In the taxable year in which the electing S corporation liquidates;

(*2*) In the taxable year in which the electing S corporation sells, exchanges, transfers (including contributions and distributions), or gifts substantially all of its assets;

(*3*) In the taxable year in which the electing S corporation ceases doing business;

(*4*) In the taxable year in which the electing S corporation's election under section 1362(a) terminates; or

(*5*) In the taxable year that includes the day before the day on which the electing S corporation files a petition in a title 11 or similar case.

(B) *Substantially all requirement.* For purposes of this paragraph (c)(3), substantially all of an electing S corporation's or partnership's assets means assets representing at least 90 percent of the fair market value of the net assets, and at least 70 percent of the fair market value of the gross assets, held by the S corporation or partnership immediately prior to the sale, exchange, transfer, or gift. For purposes of applying the rule in paragraph (c)(3)(i)(A)(*2*) of this section, a sale, exchange, transfer, or gift by any direct or indirect lower-tier partnership of the electing S corporation (lower-tier partnership) of all or part of its assets is not treated as a sale, exchange, transfer, or gift of the assets of any person that holds, directly or indirectly, an interest in such lower-tier partnership. However, for purposes of applying the rule in paragraph (c)(3)(i)(A)(*2*) of this section, a sale, exchange, transfer, or gift of substantially all of the assets of a transferee partnership (as described in paragraph (c)(3)(iii)(A) of this section), or of a lower-tier partnership that received assets of the electing S corporation from a transferee partnership of the electing S corporation or another lower-tier partnership in a transaction governed all or in part by section 721, is treated as a sale, exchange, transfer, or gift by the holder of an interest in such transferee partnership or lower-tier partnership of its entire interest in that transferee partnership or lower-tier partnership.

(ii) *Shareholder events*—(A) *General rules.* Except as provided in paragraph (c)(3)(iii) of this section, a shareholder's share of an electing S corporation's deferred items is accelerated and must be taken into account by such shareholder in the taxable year in which—

(*1*) The shareholder dies;

(*2*) The shareholder sells, exchanges (including redemptions treated as exchanges under section 302), transfers (including contributions and distributions), or gifts (including transfers treated as gifts under section 1041) all or a portion of its interest in the electing S corporation; or

(*3*) The shareholder abandons its interest in the electing S corporation.

(B) *Partial transfers.* For purposes of paragraph (c)(3)(ii)(A)(*2*) of this section, if a shareholder of an electing S corporation sells, exchanges (including redemptions treated as exchanges under section 302), transfers (including contributions or distributions), or gifts (including transfers treated as gifts under section 1041) a portion of its interest in the electing S corporation, such shareholder's share of the electing S corporation's deferred items proportionate to the interest that was sold, exchanged, transferred, or gifted is accelerated and must be taken into account by such shareholder.

(iii) *Events not constituting acceleration.* Notwithstanding the rules in paragraphs (c)(3)(i) and (ii) of this section, a shareholder's share of an electing S corporation's deferred items is not accelerated by any of the events described in this paragraph (c)(3)(iii).

(A) *Electing S corporation's contributions.* A shareholder's share of an electing S corporation's deferred items is not accelerated if the electing S corporation contributes all or a portion of its assets in a transaction governed all or in part by section 721(a) to a partnership (transferee partnership) in exchange for an interest in the transferee partnership. Notwithstanding the rules in this paragraph (c)(3)(iii)(A), the rules in paragraph (c)(3)(i)(A) of this section apply to any part of the transaction to which section 721(a) does not apply.

(B) *Section 1031 exchanges.* A shareholder's share of an electing S corporation's deferred items is not accelerated if the electing S corporation transfers property held for productive use in a trade or business or for investment in exchange for property of like kind which is to be held either for productive use in a trade or business or for investment in a transaction to which section 1031(a)(1) applies. Notwithstanding the rules in this paragraph (c)(3)(iii)(B), to the extent the electing S corporation receives money or other property which does not meet the requirements of section 1031(a) (boot) in the exchange, a proportionate amount of the property transferred by the electing S corporation equal to the proportion of the boot to the total consideration received in the exchange shall be treated as sold for purposes of paragraph (c)(3)(i)(A)(*2*) of this section.

(C) *Section 381 transactions.* A shareholder's share of an electing S corporation's deferred items is not accelerated if, as part of a transaction described in paragraph (c)(3)(i)(A) of this section, the electing S corporation's assets are acquired by another S corporation (acquiring S corporation) in a transaction to which section 381(a) applies. In such a case, the acquiring S corporation succeeds to the electing S corporation's remaining deferred items and becomes subject to section 108(i), including all reporting requirements under this section, as if the acquiring S corporation were the electing S corporation. The acquiring S corporation must allocate and report the electing S corporation's deferred items to the same extent that the electing S corporation would have been required to allocate and report those deferred items, and only to those shareholders who had a share of the electing S corporation's deferred items prior to the transaction.

(D) *Retirement of a debt instrument.* See §1.108(i)–3(c)(1) for rules regarding the retirement of a debt instrument that is subject to section 108(i).

(E) *Other non-acceleration events.* A shareholder's share of an electing S corporation's deferred items is not accelerated with respect to any transaction if the Commissioner makes a determination by published guidance that such transaction is not an acceleration event under the rules of this paragraph (c)(3).

(iv) *Related S corporations.* A shareholder's share of a related S corporation's deferred OID deduction (as determined in paragraph (d)(2) of this section) that has not previously been taken into account is accelerated and taken into account by the shareholder in the taxable year in which, and to the extent that, deferred COD income to which the related S corporation's deferred OID deduction relates is taken into account by the electing entity or its owners.

(d) *General rules applicable to partnerships and S corporations*—(1) *Applicable debt instrument (trade or business requirement).* The determination of whether a debt instrument issued by a partnership or an S corporation is treated as a debt instrument issued in connection with the conduct of a trade or business by the partnership or S corporation for purposes of this section is based on all the facts and circumstances. However, a debt instrument issued by a partnership or an S corporation shall be treated as an applicable debt instrument for purposes of this section if the electing partnership or electing S corporation can establish that—

(i) The gross fair market value of the trade or business assets of the partnership or S corporation that issued the debt instrument represented at least 80 percent of the gross fair market value of that partnership's or S corporation's total assets on the date of issuance;

(ii) The trade or business expenditures of the partnership or S corporation that issued the debt instrument represented at least 80 percent of the partnership's or S corporation's total expenditures for the taxable year of issuance;

(iii) At least 95 percent of interest paid or accrued on the debt instrument issued by the partnership or S corporation was allocated to one or more trade or business expenditures under §1.163–8T for the taxable year of issuance;

(iv) At least 95 percent of the proceeds from the debt instrument issued by the partnership or S corporation were used by the partnership or S corporation to acquire one or more trades or businesses within six months from the date of issuance; or

(v) The partnership or S corporation issued the debt instrument to a seller of a trade or business to acquire the trade or business.

(2) *Deferral of OID at entity level*—(i) *In general.* For each taxable year during the deferral period, an issuing entity determines the amount of its deferred OID deduction with respect to a

debt instrument, if any. An issuing entity's deferred OID deduction for a taxable year is the lesser of:

(A) The OID that accrues in a current taxable year during the deferral period with respect to the debt instrument (less any of such OID that is allowed as a deduction in the current taxable year as a result of an acceleration event), or

(B) The excess, if any, of the electing entity's deferred COD income (less the aggregate amount of such deferred COD income that has been included in income in the current taxable year and any previous taxable year during the deferral period) over the aggregate amount of OID that accrued in previous taxable years during the deferral period with respect to the debt instrument (less the aggregate amount of such OID that has been allowed as a deduction in the current taxable year and any previous taxable year during the deferral period).

(ii) *Excess deferred OID deduction*. If, as a result of an acceleration event during a taxable year in the deferral period, an issuing entity's aggregate deferred OID deduction for previous taxable years with respect to a debt instrument (less the aggregate amount of such deferred OID deduction that has been allowed as a deduction in a previous taxable year during the deferral period) exceeds the amount of the electing entity's deferred COD income (less the aggregate amount of such deferred COD income that has been included in income in the current taxable year and any previous taxable year during the deferral period), the excess deferred OID deduction shall be allowed as a deduction in the taxable year in which the acceleration event occurs.

(iii) *Examples*. The following examples illustrate the rules under paragraph (d)(2) of this section:

*Example 1 Partner joins partnership during deferral period*. (i) A and B each hold a 50 percent interest in AB partnership, a calendar-year partnership. On January 1, 2009, AB partnership issues a new debt instrument with OID and uses all of the proceeds to reacquire an outstanding applicable debt instrument of AB partnership, realizing $100 of COD income, and makes an election under section 108(i) to defer $50 of the COD income. During the deferral period, a total of $150 of OID accrues on the new debt instrument issued as part of the reacquisition. A and B each have a deferred amount of $25 with respect to the applicable debt instrument reacquired by AB partnership. For 2009, $28 of OID accrues on the new debt instrument and A and B are each allocated $14 of accrued OID with respect to the new debt instrument. On January 1, 2010, C contributes cash to AB partnership in exchange for a ⅓ partnership interest. For 2010, $29 of OID accrues on the new debt instrument, and A, B, and C are each allocated $9.67 of accrued OID.

(ii) Under paragraph (d)(2) of this section, AB partnership's deferred OID deduction for 2009 is the lesser of: $28 of OID that accrues on the new debt instrument in 2009, or the excess of AB partnership's deferred COD income of $50 over the aggregate amount of OID that accrued on the debt instrument in previous taxable years during the deferral period of $0, or $50. Thus, all $28 of the OID that accrues on the debt instrument in 2009 is deferred under section 108(i).

(iii) Under paragraph (d)(2) of this section, AB partnership's deferred OID deduction for 2010 is the lesser of: $29 of OID that accrues on the new debt instrument in 2010, or the excess of AB partnership's deferred COD income of $50 over the aggregate amount of OID that accrued on the debt instrument in previous taxable years during the deferral period of $28, or $22. Thus, $22 of the $29 of OID that accrues in 2010 is deferred under section 108(i). A, B, and C will each defer $7.33 of the $9.67 of accrued OID that was allocated to each of them.

*Example 2 Acceleration of deferred items during deferral period*. (i) On January 1, 2009, ABC partnership, a calendar-year partnership with three partners, issues a new debt instrument with OID and uses all of the proceeds to reacquire an outstanding applicable debt instrument of ABC partnership. ABC partnership realizes $150 of COD income and makes an election under section 108(i) to defer the $150 of COD income. A's deferred amount with respect to the applicable debt instrument is $75, while B and C each have a deferred amount of $37.50. In 2009, $28 of OID accrues on the new debt instrument and is allocated $7.00 to A and $10.50 to each of B and C. In 2010, $29 of OID accrues on the new debt instrument and is allocated $7.25 to A and $10.87 to each of B and C. In 2011, $30 of OID accrues on the new debt instrument and is allocated $7.50 to A and $11.25 to each of B and C. In 2012, $31 of OID accrues on the new debt instrument and is allocated $7.75 to A and $11.62 to each of B and C. On December 31, 2012, A's entire share of ABC partnership's deferred items is accelerated under paragraph (b)(6) of this section. For 2012, A includes $75 of COD income in income and is allowed a deduction of $21.75 for A's share of ABC partnership's deferred OID deduction for taxable years 2009 through 2011, and a deduction of $7.75 for A's share of ABC partnership's OID that accrues on the debt instrument in 2012.

(ii) Under paragraph (d)(2) of this section, ABC partnership's deferred OID deduction for 2012 is the lesser of: $23.25 ($31 of OID that accrues on the new debt instrument in 2012 less $7.75 of this OID that is allowed as a deduction to A in 2012) or $9.75 (the excess of $75 (ABC partnership's deferred COD income of $150 less A's share of ABC partnership's deferred COD income that is included in A's income for 2012 of $75) over $65.25 (the aggregate amount of OID that accrued in previous taxable years of $87 less the aggregate amount of such OID that has been allowed as a deduction by A in 2012 of $21.75)). Thus, of the $31 of OID that accrues in 2012, $9.75 is deferred under section 108(i).

(3) *Effect of an election under section 108(i) on recapture amounts under section 465(e)*—(i) *In general.* To the extent that a decrease in a partner's or shareholder's amount at risk (as defined in section 465) in an activity as a result of a reacquisition of an applicable debt instrument would cause a partner with a deferred amount or a shareholder with a share of the S corporation's deferred COD income to have income under section 465(e) in the taxable year of the reacquisition, such decrease (not to exceed the partner's deferred amount or the shareholder's share of the S corporation's deferred COD income with respect to that applicable debt instrument) (deferred section 465 amount) shall not be taken into account for purposes of determining the partner's or shareholder's amount at risk in an activity under section 465 as of the close of the taxable year of the reacquisition. A partner's or shareholder's deferred section 465 amount is treated as a decrease in the partner's or shareholder's amount at risk in an activity at the same time, and to the extent remaining in the same amount, as the partner recognizes its deferred amount or the S corporation shareholder recognizes its share of the S corporation's deferred COD income.

(ii) *Example.* The following example illustrates the rules in paragraph (d)(3) of this section:

*Example.* (i) PRS is a calendar-year partnership with two equal partners, individuals A and B. PRS is engaged in an activity described in section 465(c) (Activity). PRS has a $500 recourse applicable debt instrument outstanding. Each partner's amount at risk on January 1, 2009 is $50. On June 1, 2009, the creditor agrees to cancel the $500 indebtedness. PRS realizes $500 of COD income as a result of the reacquisition. The partners' share of the liabilities of PRS decreases by $500 under section 752(b), and each partner's amount at risk is decreased by $250. Other than the $500 of COD income, PRS's income and expenses for 2009 are equal. PRS makes an election under section 108(i) to defer $200 of the $500 COD income realized in connection with the reacquisition. PRS allocates the $500 of COD income equally between its partners, A and B. A and B each have a COD income amount of $250 with respect to the applicable debt instrument. PRS determines that, for both partners A and B, $100 of the $250 COD income amount is the deferred amount, and $150 is the included amount. Beginning in each taxable year 2014 through 2018, A and B each include $20 of the deferred amount in gross income.

(ii) Under paragraph (d)(3)(i) of this section, $50 of the $250 decrease in A's and B's amount at risk in Activity is the deferred section 465 amount for each of A and B and is not taken into account for purposes of determining A's and B's amount at risk in Activity at the close of 2009. In taxable year 2014, A's and B's amount at risk in Activity is decreased by $20 (deferred section 465 amount that equals the deferred amount included in A's and B's gross income in 2014). In taxable year 2015, A's and B's amount at risk in Activity is decreased by $20 for the deferred section 465 amount that equals the deferred amount included in A's and B's gross income in 2015. In taxable year 2016, A's and B's amount at risk in Activity is decreased by $10 (the remaining amount of the deferred section 465 amount).

(e) *Election procedures and reporting requirements*—(1) *Partnerships*—(i) *In general.* A partnership makes an election under section 108(i) by following procedures outlined in guidance and applicable forms and instructions issued by the Commissioner. An electing partnership (or its successor) must provide to its partners certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(ii) *Tiered passthrough entities.* A partnership that is a direct or indirect partner of an electing partnership (or its successor) or a related partnership or an S corporation partner must provide to its partners or shareholders, as the case may be, certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(iii) *Related partnerships.* A related partnership must provide to its partners certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(2) *S corporations*—(i) *In general.* An S corporation makes an election under section 108(i) by following procedures outlined in guidance and applicable forms and instructions issued by the Commissioner. An electing S corporation (or its successor) must provide to its shareholders certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(ii) *Related S corporations.* A related S corporation must provide to its shareholders certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(f) *Effective/applicability dates.* For the applicability dates of this section, see § 1.108(i)–0(b).

[T.D. 9623, 78 FR 39975, July 3, 2013; 78 FR 49366, Aug. 14, 2013]

### § 1.108(i)–3 Rules for the deduction of OID.

(a) *Deemed debt-for-debt exchanges*—(1) *In general.* For purposes of section 108(i)(2) (relating to deferred OID deductions that arise in certain debt-for-debt exchanges involving the reacquisition of an applicable debt instrument), if the proceeds of any debt instrument are used directly or indirectly by the issuer or a person related to the issuer (within the meaning of section 108(i)(5)(A)) to reacquire an applicable debt instrument, the debt instrument shall be treated as issued for the applicable debt instrument being reacquired. Therefore, section 108(i)(2) may apply, for example, to a debt instrument issued by a corporation for cash in which some or all of the proceeds are used directly or indirectly by the corporation's related subsidiary in the reacquisition of the subsidiary's applicable debt instrument.

(2) *Directly or indirectly.* Whether the proceeds of an issuance of a debt instrument are used directly or indirectly to reacquire an applicable debt instrument depends upon all of the facts and circumstances surrounding the issuance and the reacquisition. The proceeds of an issuance of a debt instrument will be treated as being used indirectly to reacquire an applicable debt instrument if—

(i) At the time of the issuance of the debt instrument, the issuer of the debt instrument anticipated that an applicable debt instrument of the issuer or a person related to the issuer would be reacquired by the issuer, and the debt instrument would not have been issued if the issuer had not so anticipated such reacquisition;

(ii) At the time of the issuance of the debt instrument, the issuer of the debt instrument or a person related to the issuer anticipated that an applicable debt instrument would be reacquired by a related person and the related person receives cash or property that it would not have received unless the reacquisition had been so anticipated; or

(iii) At the time of the reacquisition, the issuer or a person related to the issuer foresaw or reasonably should have foreseen that the issuer or a person related to the issuer would be required to issue a debt instrument, which it would not have otherwise been required to issue if the reacquisition had not occurred, in order to meet its future economic needs.

(b) *Proportional rule for accruals of OID.* For purposes of section 108(i)(2), if only a portion of the proceeds from the issuance of a debt instrument are used directly or indirectly to reacquire an applicable debt instrument, the rules of section 108(i)(2)(A) will apply to the portion of OID on the debt instrument that is equal to the portion of the proceeds from such instrument used to reacquire the outstanding applicable debt instrument. Except as provided in the last sentence of section 108(i)(2)(A), the amount of deferred OID deduction that is subject to section 108(i)(2)(A) for a taxable year is equal to the product of the amount of OID that accrues in the taxable year under section 1272 or section 1275 (and the regulations under those sections), whichever section is applicable, and a fraction, the numerator of which is the portion of the total proceeds from the issuance of the debt instrument used directly or indirectly to reacquire the applicable debt instrument and the denominator of which is the total proceeds from the issuance of the debt instrument.

(c) *No acceleration*—(1) *Retirement.* Retirement of a debt instrument subject to section 108(i)(2) does not accelerate deferred OID deductions.

(2) *Cross-reference.* See § 1.108(i)–1 and § 1.108(i)–2 for rules relating to the acceleration of deferred OID deductions.

(d) *Examples.* The application of this section is illustrated by the following examples. Unless otherwise stated, all taxpayers in the following examples are calendar-year taxpayers, and P and S each file separate returns:

*Example 1.* (i) *Facts.* P, a domestic corporation, owns all of the stock of S, a domestic corporation. S has a debt instrument outstanding that has an adjusted issue price of $100,000. On January 1, 2010, P issues for $160,000 a four-year debt instrument that has an issue price of $160,000 and a stated redemption price at maturity of $200,000, resulting in $40,000 of OID. In P's discussion with potential lenders/holders, and as described in offering materials provided to potential lenders/holders, P disclosed that it planned to use all or a portion of the proceeds from the issuance of the debt instrument to reacquire outstanding debt of P and its affiliates. Following the issuance, P makes a $70,000 capital contribution to S. S then reacquires its debt instrument from X, a person not related to S within the meaning of section 108(i)(5)(A), for $70,000. At the time of the reacquisition, the adjusted issue price of S's debt instrument is $100,000. Under § 1.61–12(c), S realizes $30,000 of COD income. S makes a section 108(i) election for the $30,000 of COD income.

(ii) *Analysis.* Under the facts, at the time of P's issuance of its $160,000 debt instrument, P anticipated that the loan proceeds would be used to reacquire the debt of S, and P's debt instrument would not have been issued for an amount greater than $90,000 if P had not anticipated that S would use the proceeds to reacquire its debt. Pursuant to paragraph (a) of this section, the proceeds from P's issuance of its debt instrument are treated as being used indirectly to reacquire S's applicable debt instrument. Therefore, section 108(i)(2)(B) applies to P's debt instrument and P's OID deductions on its debt instrument are subject to deferral under section 108(i)(2)(A). However, because only a portion of the proceeds from P's debt instrument are used by S to reacquire its applicable debt instrument, only a portion of P's total OID deductions will be deferred under section 108(i)(2)(A). See section 108(i)(2)(B). Accordingly, a maximum of $17,500 ($40,000 × $70,000/$160,000) of P's $40,000 total OID deductions is subject to deferral under section 108(i)(2)(A). Under paragraph (b) of this section, the amount of P's deferred OID deduction each taxable year under section 108(i)(2)(A) is equal to the product of the amount of OID that accrues in the taxable year under section 1272 for the debt instrument and a fraction ($70,000/$160,000). As a result, P's deferred OID deductions are the following amounts: $4,015.99 for 2010 ($9,179.40 × $70,000/$160,000); $4,246.39 for 2011 ($9,706.04 × $70,000/$160,000); $4,490.01 for 2012 ($10,262.88 × $70,000/$160,000); and $4,747.61 for 2013 ($10,851.68 × $70,000/$160,000).

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that S makes a section 108(i) election for only $10,000 of the $30,000 of COD income.

(ii) *Analysis.* The maximum amount of P's deferred OID deductions under section 108(i)(2)(A) is $10,000 rather than $17,500 because S made a section 108(i) election for only $10,000 of the $30,000 of COD income. Under section 108(i)(2)(A), because the amount of OID that accrues prior to 2014 attributable to the portion of the debt instrument issued to indirectly reacquire S's applicable debt instrument under paragraph (b) of this section ($17,500) exceeds the amount of deferred COD income under section 108(i) ($10,000), P's deferred OID deductions are the following amounts: $4,015.99 for 2010; $4,246.39 for 2011; $1,737.62 for 2012; and $0 for 2013.

*Example 3.* (i) *Facts.* The facts are the same as in *Example 1*, except that P pays $200,000 in cash to the lenders/holders on December 31, 2012, to retire the debt instrument. P did not directly or indirectly obtain the funds to retire the debt instrument from the issuance of another debt instrument with OID.

(ii) *Analysis.* Under paragraph (c)(1) of this section, the retirement of P's debt instrument is not an acceleration event for the deferred OID deductions of $4,015.99 for 2010, $4,246.39 for 2011, and $4,490.01 for 2012. Except as provided in § 1.108(i)–1(b)(4), these amounts will be taken into account during the inclusion period. P, however, paid a repurchase premium of $10,851.68 in 2012 ($200,000 minus the adjusted issue price of $189,148.32) to retire the debt instrument. If otherwise allowable, P may deduct this amount in 2012 under § 1.163–7(c).

(e) *Effective/applicability dates.* For *effective/applicability dates*, see § 1.108(i)–0(b).

[T.D. 9622, 78 FR 39991, July 3, 2013]

### § 1.109–1 Exclusion from gross income of lessor of real property of value of improvements erected by lessee.

(a) Income derived by a lessor of real property upon the termination, through forfeiture or otherwise, of the lease of such property and attributable to buildings erected or other improvements made by the lessee upon the leased property is excluded from gross income. However, where the facts disclose that such buildings or improvements represent in whole or in part a liquidation in kind of lease rentals, the exclusion from gross income shall not apply to the extent that such buildings or improvements represent such liquidation. The exclusion applies only with respect to the income realized by the lessor upon the termination of the lease and has no application to income, if any, in the form of rent, which may be derived by a lessor during the period of the lease and attributable to buildings erected or other improvements made by the lessee. It has no application to income which may be realized by the lessor upon the termination of the lease but not attributable to the value of such buildings or improvements. Neither does it apply to income derived by the lessor subsequent to the termination of the lease incident to the ownership of such buildings or improvements.

(b) The provisions of this section may be illustrated by the following example:

*Example.* The A Corporation leased in 1945 for a period of 50 years unimproved real property to the B Corporation under a lease providing that the B Corporation erect on the leased premises an office building costing $500,000, in addition to paying the A Corporation a lease rental of $10,000 per annum beginning on the date of completion of the improvements, the sum of $100,000 being placed in escrow for the payment of the rental. The building was completed on January 1, 1950. The lease provided that all improvements made by the lessee on the leased property would become the absolute property of the A Corporation on the termination of the lease by forfeiture or otherwise and that the lessor would become entitled on such termination to the remainder of the sum, if any, remaining in the escrow fund. The B Corporation forfeited its lease on January 1, 1955, when the improvements had a value of $100,000. Under the provisions of section 109, the $100,000 is excluded from gross income. The amount of $50,000 representing the remainder in the escrow fund is forfeited to the A Corporation and is included in the gross income of that taxpayer. As to the basis of the property in the hands of the A Corporation, see §1.1019–1.

## § 1.110–1 Qualified lessee construction allowances.

(a) *Overview.* Amounts provided to a lessee by a lessor for property to be constructed and used by the lessee pursuant to a lease are not includible in the lessee's gross income if the amount is a qualified lessee construction allowance under paragraph (b) of this section.

(b) *Qualified lessee construction allowance*—(1) *In general.* A qualified lessee construction allowance means any amount received in cash (or treated as a rent reduction) by a lessee from a lessor—

(i) Under a short-term lease of retail space;

(ii) For the purpose of constructing or improving qualified long-term real property for use in the lessee's trade or business at that retail space; and

(iii) To the extent the amount is expended by the lessee in the taxable year received on the construction or improvement of qualified long-term real property for use in the lessee's trade or business at that retail space.

(2) *Definitions*—(i) *Qualified long-term real property* is nonresidential real property under section 168(e)(2)(B) that is part of, or otherwise present at, the retail space referred to in paragraph (b)(1)(i) of this section and which reverts to the lessor at the termination of the lease. Thus, qualified long-term real property does not include property qualifying as section 1245 property under section 1245(a)(3).

(ii) *Short-term lease* is a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined pursuant to section 168(i)(3)).

(iii) *Retail space* is nonresidential real property under section 168(e)(2)(B) that is leased, occupied, or otherwise used by the lessee in its trade or business of selling tangible personal property or services to the general public. The term *retail space* includes not only the space where the retail sales are made, but also space where activities supporting the retail activity are performed (such as an administrative office, a storage area, and employee lounge). Examples of services typically sold to the general public include services provided by hair stylists, tailors, shoe repairmen, doctors, lawyers, accountants, insurance agents, stock brokers, securities dealers (including dealers who sell securities out of inventory), financial advisors and bankers. For purposes of this paragraph (b)(2)(iii), a taxpayer is selling to the general public if the products or services for sale are made available to the general public, even if the product or service is targeted to certain customers or clients.

(3) *Purpose requirement.* An amount will meet the requirement in paragraph (b)(1)(ii) of this section only to the extent that the lease agreement for the retail space expressly provides that the construction allowance is for the purpose of constructing or improving qualified long-term real property for use in the lessee's trade or business at the retail space. An ancillary agreement between the lessor and the lessee providing for a construction allowance, executed contemporaneously with the lease or during the term of the lease, is considered a provision of the lease agreement for purposes of the preceding sentence, provided the agreement is executed before payment of the construction allowance.

(4) *Expenditure requirement*—(i) *In general.* Expenditures referred to in paragraph (b)(1)(iii) of this section may be treated as being made first from the lessee's construction allowance. Tracing of the construction allowance to the actual lessee expenditures for the construction or improvement of qualified long-term real property is not required. However, the lessee should maintain accurate records of the amount of the qualified lessee construction allowance received and the expenditures made for qualified long-term real property.

(ii) *Time when expenditures deemed made.* For purposes of paragraph (b)(1)(iii) of this section, an amount is deemed to have been expended by a lessee in the taxable year in which the construction allowance was received by the lessee if—

(A) The amount is expended by the lessee within 8½ months after the close of the taxable year in which the amount was received; or

(B) The amount is a reimbursement from the lessor for amounts expended by the lessee in a prior year and for which the lessee has not claimed any depreciation deductions.

(5) *Consistent treatment by lessor.* Qualified long-term real property constructed or improved with any amount excluded from a lessee's gross income by reason of paragraph (a) of this section must be treated as nonresidential real property owned by the lessor (for purposes of depreciation under 168(e)(2)(B) and determining gain or loss under section 168(i)(8)(B)). For purposes of the preceding sentence, the lessor must treat the construction allowance as fully expended in the manner required by paragraph (b)(1)(iii) of this section unless the lessor is notified by the lessee in writing to the contrary. General tax principles apply for purposes of determining when the lessor may begin depreciation of its nonresidential real property. The lessee's exclusion from gross income under paragraph (a) of this section, however, is not dependent upon the lessor's treatment of the property as nonresidential real property.

(c) *Information required to be furnished*—(1) *In general.* The lessor and the lessee described in paragraph (b) of this section who are paying and receiving a qualified lessee construction allowance, respectively, must furnish the information described in paragraph (c)(3) of this section in the time and manner prescribed in paragraph (c)(2) of this section.

(2) *Time and manner for furnishing information.* The requirement to furnish information under paragraph (c)(1) of this section is met by attaching a statement with the information described in paragraph (c)(3) of this section to the lessor's or the lessee's, as applicable, timely filed (including extensions) Federal income tax return for the taxable year in which the construction allowance was paid by the lessor or received by the lessee (either in cash or treated as a rent reduction), as applicable. A lessor or a lessee may report the required information for several qualified lessee construction allowances on a combined statement. However, a lessor's or a lessee's failure to provide information with respect to each lease will be treated as a separate

failure to provide information for purposes of paragraph (c)(4) of this section.

(3) *Information required*—(i) *Lessor*. The statement provided by the lessor must contain the lessor's name (and, in the case of a consolidated group, the parent's name), employer identification number, taxable year and the following information for each lease:

(A) The lessee's name (in the case of a consolidated group, the parent's name).

(B) The address of the lessee.

(C) The employer identification number of the lessee.

(D) The location of the retail space (including mall or strip center name, if applicable, and store name).

(E) The amount of the construction allowance.

(F) The amount of the construction allowance treated by the lessor as nonresidential real property owned by the lessor.

(ii) *Lessee*. The statement provided by the lessee must contain the lessee's name (and, in the case of a consolidated group, the parent's name), employer identification number, taxable year and the following information for each lease:

(A) The lessor's name (in the case of a consolidated group, the parent's name).

(B) The address of the lessor.

(C) The employer identification number of the lessor.

(D) The location of the retail space (including mall or strip center name, if applicable, and store name).

(E) The amount of the construction allowance.

(F) The amount of the construction allowance that is a qualified lessee construction allowance under paragraph (b) of this section.

(4) *Failure to furnish information*. A lessor or a lessee that fails to furnish the information required in this paragraph (c) may be subject to a penalty under section 6721.

(d) *Effective date*. This section is applicable to leases entered into on or after October 5, 2000.

[T.D. 8901, 65 FR 53586, Sept. 5, 2000]

**§ 1.111–1 Recovery of certain items previously deducted or credited.**

(a) *General*. Section 111 provides that income attributable to the recovery during any taxable year of bad debts, prior taxes, and delinquency amounts shall be excluded from gross income to the extent of the ''recovery exclusion'' with respect to such items. The rule of exclusion so prescribed by statute applies equally with respect to all other losses, expenditures and accruals made the basis of deductions from gross income for prior taxable years, including war losses referred to in section 127 of the Internal Revenue Code of 1939, but not including deductions with respect to depreciation, depletion, amortization, or amortizable bond premiums. The term ''recovery exclusion'' as used in this section means an amount equal to the portion of the bad debts, prior taxes, and delinquency amounts (the items specifically referred to in section 111), and of all other items subject to the rule of exclusion which, when deducted or credited for a prior taxable year, did not result in a reduction of any tax of the taxpayer under subtitle A (other than the accumulated earnings tax imposed by section 531 or the personal holding company tax imposed by section 541) of the Internal Revenue Code of 1954 or corresponding provisions of prior income tax laws (other than the World War II excess profits tax imposed under subchapter E, chapter 2 of the Internal Revenue Code of 1939).

(1) *Section 111 items*. The term ''section 111 items'' as used in this section means bad debts, prior taxes, delinquency amounts, and all other items subject to the rule of exclusion, for which a deduction or credit was allowed for a prior taxable year. If a bad debt was previously charged against a reserve by a taxpayer on the reserve method of treating bad debts, it was not deducted, and it is therefore not considered a section 111 item. Bad debts, prior taxes, and delinquency amounts are defined in section 111(b) (1), (2), and (3), respectively. An example of a delinquency amount is interest on delinquent taxes. An example of the other items not expressly referred to in section 111 but nevertheless subject to the rule of exclusion is a loss sustained

upon the sale of stock and later recovered, in whole or in part, through an action against the party from whom such stock had been purchased.

(2) *Definition of ''recovery''.* Recoveries result from the receipt of amounts in respect of the previously deducted or credited section 111 items, such as from the collection or sale of a bad debt, refund or credit of taxes paid, or cancellation of taxes accrued. Care should be taken in the case of bad debts which were treated as only partially worthless in prior years to distinguish between the item described in section 111, that is, the part of such debt which was deducted, and the part not previously deducted, which is not a section 111 item and is considered the first part collected. The collection of the part not deducted is not considered a ''recovery''. Furthermore, the term ''recovery'' does not include the gain resulting from the receipt of an amount on account of a section 111 item which, together with previous such receipts, exceeds the deduction or credit previously allowed for such item. For instance, a $100 corporate bond purchased for $40 and later deducted as worthless is subsequently collected to the extent of $50. The $10 gain (excess of $50 collection over $40 cost) is not a recovery of a section 111 item. Such gain is in no case excluded from gross income under section 111, regardless of whether the $40 recovery is or is not excluded.

(3) *Treatment of debt deducted in more than one year by reason of partial worthlessness.* In the case of a bad debt deducted in part for two or more prior years, each such deduction of a part of the debt is considered a separate section 111 item. A recovery with respect to such debt is considered first a recovery of those items (or portions thereof), resulting from such debt, for which there are recovery exclusions. If there are recovery exclusions for two or more items resulting from the same bad debt, such items are considered recovered in the order of the taxable years for which they were deducted, beginning with the latest. The recovery exclusion for any such item is determined by considering the recovery exclusion with respect to the prior year for which such item was deducted as being first used to offset all other applicable recoveries in the year in which the bad debt is recovered.

(4) *Special provisions as to worthless bonds, etc., which are treated as capital losses.* Certain bad debts arising from the worthlessness of securities and certain nonbusiness bad debts are treated as losses from the sale or exchange of capital assets. See sections 165(g) and 166(d). The amounts of the deductions allowed for any year under section 1211 on account of such losses for such year are considered to be section 111 items. Any part of such losses which, under section 1211, is a deduction for a subsequent year through the capital loss carryover (any later receipt of an amount with respect to such deducted loss is a recovery) is considered a section 111 item for the year in which such loss was sustained.

(b) *Computation of recovery exclusion*—(1) *Amount of recovery exclusion allowable for year of recovery.* For the year of any recovery, the section 111 items which were deducted or credited for one prior year are considered as a group and the recovery thereon is considered separately from recoveries of any items which were deducted or credited for other years. This recovery is excluded from gross income to the extent of the recovery exclusion with respect to this group of items as (i) determined for the original year for which such items were deducted or credited (see subparagraph (2) of this paragraph) and (ii) reduced by the excludable recoveries in intervening years on account of all section 111 items for such original year. A taxpayer claiming a recovery exclusion shall submit, at the time the exclusion is claimed, the computation of the recovery exclusion claimed for the original year for which the items were deducted or credited, and computations showing the amount recovered in intervening years on account of the section 111 items deducted or credited for the original year.

(2) *Determination of recovery exclusion for original year for which items were deducted or credited.* (i) The recovery exclusion for the taxable year for which section 111 items were deducted or credited (that is, the ''original taxable year'') is the portion of the aggregate amount of such deductions and credits

which could be disallowed without causing an increase in any tax of the taxpayer imposed under subtitle A (other than the accumulated earnings tax imposed by section 531 or the personal holding company tax imposed by section 541) of the Internal Revenue Code of 1954 or corresponding provisions of prior income tax laws (other than the World War II excess profits tax imposed under subchapter E, chapter 2 of the Internal Revenue Code of 1939). For the purpose of such recovery exclusion, consideration must be given to the effect of net operating loss carryovers and carrybacks or capital loss carryovers.

(ii) This rule shall be applied by determining the recovery exclusion as the aggregate amount of the section 111 items for the original year for which such items were deducted or credited reduced by whichever of the following amounts is the greater:

(*a*) The difference between (*1*) the taxable income for such original year and (*2*) the taxable income computed without regard to the section 111 items for such original year.

(*b*) In the case of a taxpayer subject to any income tax in lieu of normal tax or surtax or both (except the alternative tax on capital gains imposed by section 1201, which is disregarded), the difference between (*1*) the income subject to such tax for such original year and (*2*) the income subject to such tax computed without regard to the section 111 items for such original year.

(Neither the amount determined under (*1*) nor the amount under (*2*) of (*a*) or (*b*) of this subdivision shall in any case be considered less than zero.) For this determination of the recovery exclusion, the aggregate of the section 111 items must be further decreased by the portion thereof which caused a reduction in tax in preceding or succeeding taxable years through any net operating loss carryovers or carrybacks or capital loss carryovers affected by such items. This decrease is the aggregate of the largest amount determined for each of such preceding and succeeding years under (*a*) and (*b*) of this subdivision, the computation of each carryover or carryback to the preceding or succeeding year being made under (*1*) of (*a*) and (*b*) of this subdivision with regard to the section 111 items for the original year and such computation being made under (*2*) of (*a*) and (*b*) of this subdivision without regard to such items. For the purpose of the preceding sentence, the computations under both (*1*) and (*2*) of (*a*) and (*b*) of this subdivision shall be made without regard to any section 111 items for such preceding or succeeding year and the carryovers and carrybacks to such year shall be determined without regard to any section 111 items for years subsequent to the original year.

(iii) The determination of the recovery exclusion for original taxable years subject to the provisions of the Internal Revenue Code of 1939 shall be made under 26 CFR (1939) 39.22(b)(12)–1(b)(2) (Regulations 118).

(3) *Example.* The provisions of this paragraph may be illustrated by the following example:

*Example.* A single individual with no dependents has for his 1954 taxable year the following income and deductions:

| | With deduction of section 111 items | Without deduction of section 111 items |
|---|---|---|
| Gross income | $25,000 | $25,000 |
| Less deductions: | | |
| Depreciation | 20,000 | 20,000 |
| Business bad debts and taxes | 6,300 | |
| Personal exemption | 600 | 600 |
| | 26,900 | 20,600 |
| Taxable income or (loss) | (1,900) | 4,400 |
| Adjustment under section 172(d)(3) | 600 | |
| Net operating loss | (1,300) | .............. |

The full amount of the net operating loss of $1,300 is carried back and allowed as a deduction for 1952. The aggregate of the section 111 items for 1954 is $6,300 (bad debts and taxes). The recovery exclusion on account of section 111 items for 1954 is $600, determined by reducing the $6,300 aggregate of the section 111 items by $5,700, *i.e.*, the sum of (1) the difference between the amount of the taxable income for 1954 computed without regard to the section 111 items ($4,400) and the amount of the taxable income for 1954 (not less than zero) computed by taking such items into account, and (2) the amount of the net operating loss ($1,300) which caused the reduction in tax for 1952 by reason of the carryback provisions. If in 1956 the taxpayer recovers $400 of the bad debts, all of the recovery is excluded from the income by reason of the recovery exclusion of $600 determined for the original year 1954. If in 1957 the taxpayer recovers an additional $300 of the bad debts, only $200 is excluded from gross income. That is, the recovery exclusion of $600 determined for the original year 1954 is reduced by the $400 recovered in 1956, leaving a balance of $200 which is used in 1957. The balance of the amount recovered in 1957, $100 ($300 less $200), is included in gross income for 1957.

(c) *Provisions as to taxes imposed by section 531 (relating to the accumulated earnings tax) and section 541 (relating to the tax on personal holding companies).* A recovery exclusion allowed for purposes of subtitle A (other than section 531 or section 541) of the Internal Revenue Code of 1954 shall also be allowed for the purpose of determining the accumulated earnings tax under section 531 or the personal holding company tax under section 541 regardless of whether or not the section 111 items on which such recovery exclusion is based resulted in a reduction of the tax under section 531 or section 541 of the Internal Revenue Code of 1954 (or corresponding provisions of prior income tax laws) for the prior taxable year. Furthermore, if there is recovery of a section 111 item which was not allowable as a deduction or credit for the prior taxable year for purposes of Subtitle A (not including section 531 or section 541) or corresponding provisions of prior income tax laws (other than Subchapter E, Chapter 2 of the Internal Revenue Code of 1939, relating to World War II excess profits tax), but was allowable for such prior taxable year in determining the tax under section 531 or section 541 (or corresponding provisions of prior income tax laws) then for the purpose of determining the tax under section 531 or section 541 a recovery exclusion shall be allowable with respect to such recovery if the section 111 item did not result in a reduction of the tax under section 531 or section 541 (or corresponding provisions of prior income tax laws).

### § 1.112–1 Combat zone compensation of members of the Armed Forces.

(a) *Combat zone compensation exclusion*—(1) *Amount excluded.* In addition to the exemptions and credits otherwise applicable, section 112 excludes from gross income the following compensation of members of the Armed Forces:

(i) *Enlisted personnel.* Compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which the member served in a combat zone or was hospitalized at any place as a result of wounds, disease, or injury incurred while serving in the combat zone.

(ii) *Commissioned officers.* Compensation not exceeding the monthly dollar limit received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which the officer served in a combat zone or was hospitalized at any place as a result of wounds, disease, or injury incurred while serving in the combat zone. The monthly dollar limit is the monthly amount excludable from the officer's income under section 112(b) as amended. Beginning in 1966, the monthly dollar limit for periods of active service after 1965 became $500. As of September 10, 1993, the monthly dollar limit continues to be $500.

(2) *Time limits on exclusion during hospitalization.* Compensation received for service for any month of hospitalization that begins more than 2 years after the date specified by the President in an Executive Order as the date of the termination of combatant activities in the combat zone cannot be excluded under section 112. Furthermore, compensation received while hospitalized after January 1978 for wounds, disease, or injury incurred in the Vietnam combat zone designated by Executive Order 11216 cannot be excluded under section 112.

(3) *Special terms.* A commissioned warrant officer is not a *commissioned officer* under section 112(b) and is entitled to the exclusion allowed to enlisted personnel under section 112(a). *Compensation*, for the purpose of section 112, does not include pensions and retirement pay. *Armed Forces of the United States* is defined (and members of the Armed Forces are described) in section 7701(a)(15).

(4) *Military compensation only.* Only compensation paid by the Armed

Forces of the United States to members of the Armed Forces can be excluded under section 112, except for compensation paid by an agency or instrumentality of the United States or by an international organization to a member of the Armed Forces whose military active duty status continues during the member's assignment to the agency or instrumentality or organization on official detail. Compensation paid by other employers (whether private enterprises or governmental entities) to members of the Armed Forces cannot be excluded under section 112 even if the payment is made to supplement the member's military compensation or is labeled by the employer as compensation for active service in the Armed Forces of the United States. Compensation paid to civilian employees of the federal government, including civilian employees of the Armed Forces, cannot be excluded under section 112, except as provided in section 112(d)(2) (which extends the exclusion to compensation of civilian employees of the federal government in missing status due to the Vietnam conflict).

(b) *Service in combat zone*—(1) *Active service.* The exclusion under section 112 applies only if active service is performed in a combat zone. A member of the Armed Forces is in active service if the member is actually serving in the Armed Forces of the United States. Periods during which a member of the Armed Forces is absent from duty on account of sickness, wounds, leave, internment by the enemy, or other lawful cause are periods of active service. A member of the Armed Forces in active service in a combat zone who becomes a prisoner of war or missing in action in the combat zone is deemed, for the purpose of section 112, to continue in active service in the combat zone for the period for which the member is treated as a prisoner of war or as missing in action for military pay purposes.

(2) *Combat zone status.* Except as provided in paragraphs (e) and (f) of this section, service is performed in a combat zone only if it is performed in an area which the President of the United States has designated by Executive Order, for the purpose of section 112, as an area in which Armed Forces of the United States are or have been engaged in combat, and only if it is performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in that zone and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in that zone.

(3) *Partial month service.* If a member of the Armed Forces serves in a combat zone for any part of a month, the member is entitled to the exclusion for that month to the same extent as if the member has served in that zone for the entire month. If a member of the Armed Forces is hospitalized for a part of a month as a result of wounds, disease, or injury incurred while serving in that zone, the member is entitled to the exclusion for the entire month.

(4) *Payment time and place.* The time and place of payment are irrelevant in considering whether compensation is excludable under section 112; rather, the time and place of the entitlement to compensation determine whether the compensation is excludable under section 112. Thus, compensation can be excluded under section 112 whether or not it is received outside a combat zone, or while the recipient is hospitalized, or in a year different from that in which the service was rendered for which the compensation is paid, provided that the member's entitlement to the compensation fully accrued in a month during which the member served in the combat zone or was hospitalized as a result of wounds, disease, or injury incurred while serving in the combat zone. For this purpose, entitlement to compensation fully accrues upon the completion of all actions required of the member to receive the compensation. Compensation received by a member of the Armed Forces for services rendered while in active service can be excluded under section 112 even though payment is received subsequent to discharge or release from active service. Compensation credited to a deceased member's account for a period subsequent to the established date of the member's death and received by the member's estate can be excluded from the gross income of the estate under section 112 to the same extent

that it would have been excluded from the gross income of the member had the member lived and received the compensation.

(5) *Examples of combat zone compensation.* The rules of this section are illustrated by the following examples:

*Example 1.* On January 5, outside of a combat zone, an enlisted member received basic pay for active duty services performed from the preceding December 1 through December 31. On December 4 (and no other date), the member performed services within a combat zone. The member may exclude from income the entire payment received on January 5, although the member served in the combat zone only one day during December, received the payment outside of the combat zone, and received the payment in a year other than the year in which the combat zone services were performed.

*Example 2.* From March through December, an enlisted member became entitled to 25 days of annual leave while serving in a combat zone. The member used all 25 days of leave in the following year. The member may exclude from income the compensation received for those 25 days, even if the member performs no services in the combat zone in the year the compensation is received.

*Example 3.* From March through December, a commissioned officer became entitled to 25 days of annual leave while serving in a combat zone. During that period the officer also received basic pay of $1,000 per month from which the officer excluded from income $500 per month (exhausting the monthly dollar limit under section 112 for that period). The officer used all 25 days of leave in the following year. The officer may not exclude from income any compensation received in the following year related to those 25 days of leave, since the officer had already excluded from income the maximum amount of combat zone compensation for the period in which the leave was earned.

*Example 4.* In November, while serving in a combat zone, an enlisted member competing for a cash award submitted an employee suggestion. After November, the member neither served in a combat zone nor was hospitalized for wounds incurred in the combat zone. In June of the following year, the member's suggestion was selected as the winner of the competition and the award was paid. The award can be excluded from income as combat zone compensation although granted and received outside of the combat zone, since the member completed the necessary action to win the award (submission of the suggestion) in a month during which the member served in the combat zone.

*Example 5.* In July, while serving in a combat zone, an enlisted member voluntarily reenlisted. After July, the member neither served in a combat zone nor was hospitalized for wounds incurred in the combat zone. In February of the following year, the member received a bonus as a result of the July reenlistment. The reenlistment bonus can be excluded from income as combat zone compensation although received outside of the combat zone, since the member completed the necessary action for entitlement to the reenlistment bonus in a month during which the member served in the combat zone.

*Example 6.* In July, while serving outside a combat zone, an enlisted member voluntarily reenlisted. In February of the following year, the member, while performing services in a combat zone, received a bonus as a result of the July reenlistment. The reenlistment bonus cannot be excluded from income as combat zone compensation although received while serving in the combat zone, since the member completed the necessary action for entitlement to the reenlistment bonus in a month during which the member had neither served in the combat zone nor was hospitalized for wounds incurred while serving in a combat zone.

(c) *Hospitalization*—(1) *Presumption of combat zone injury.* If an individual is hospitalized for wound, disease, or injury while serving in a combat zone, the wound, disease, or injury will be presumed to have been incurred while serving in a combat zone, unless the contrary clearly appears. In certain cases, however, a wound, disease, or injury may have been incurred while serving in a combat zone even though the individual was not hospitalized for it while so serving. In exceptional cases, a wound, disease, or injury will not have been incurred while serving in a combat zone even though the individual was hospitalized for it while so serving.

(2) *Length of hospitalization.* An individual is hospitalized only until the date the individual is discharged from the hospital.

(3) *Examples of combat zone injury.* The rules of this paragraph (c) are illustrated by the following examples:

*Example 1.* An individual is hospitalized for a disease in the combat zone where the individual has been serving for three weeks. The incubation period of the disease is two to four weeks. The disease is incurred while serving in the combat zone.

*Example 2.* The facts are the same as in *Example 1* except that the incubation period of the disease is one year. The disease is not incurred while serving in the combat zone.

*Example 3.* A member of the Air Force, stationed outside the combat zone, is shot while participating in aerial combat over the combat zone, but is not hospitalized until returning to the home base. The injury is incurred while serving in a combat zone.

*Example 4.* An individual is hospitalized for a disease three weeks after having departed from a combat zone. The incubation period of the disease is two to four weeks. The disease is incurred while serving in a combat zone.

(d) *Married members.* The exclusion under section 112 applies without regard to the marital status of the recipient of the compensation. If both spouses meet the requirements of the statute, then each spouse is entitled to the benefit of an exclusion. In the case of a husband and wife domiciled in a State recognized for Federal income tax purposes as a community property State, any exclusion from gross income under section 112 operates before apportionment of the gross income of the spouses under community property law. For example, a husband and wife are domiciled in a community property State and the member spouse is entitled, as a commissioned officer, to the benefit of the exclusion under section 112(b) of $500 for each month. The member receives $7,899 as compensation for active service for 3 months in a combat zone. Of that amount, $1,500 is excluded from gross income under section 112(b) and $6,399 is taken into account in determining the gross income of both spouses.

(e) *Service in area outside combat zone*—(1) *Combat zone treatment.* For purposes of section 112, a member of the Armed Forces who performs military service in an area outside the area designated by Executive Order as a combat zone is deemed to serve in that combat zone while the member's service is in direct support of military operations in that zone and qualifies the member for the special pay for duty subject to hostile fire or imminent danger authorized under section 310 of title 37 of the United States Code, as amended (37 U.S.C. 310) (hostile fire/imminent danger pay).

(2) *Examples of combat zone treatment.* The examples in this paragraph (e)(2) are based on the following circumstances: Certain areas, airspace, and adjacent waters are designated as a combat zone for purposes of section 112 as of May 1. Some members of the Armed Forces are stationed in the combat zone; others are stationed in two foreign countries outside the combat zone, named Nearby Country and Destination Country.

*Example 1.* B is a member of an Armed Forces ground unit stationed in the combat zone. On May 31, B's unit crosses into Nearby Country. B performs military service in Nearby Country in direct support of the military operations in the combat zone from June 1 through June 8 that qualifies B for hostile fire/imminent danger pay. B does not return to the combat zone during June. B is deemed to serve in the combat zone from June 1 through June 8. Accordingly, B is entitled to the exclusion under section 112 for June. Of course, B is also entitled to the exclusion for any month (May, in this example) in which B actually served in the combat zone.

*Example 2.* B is a member of an Armed Forces ground unit stationed in the combat zone. On May 31, B's unit crosses into Nearby Country. On June 1, B is wounded while performing military service in Nearby Country in direct support of the military operations in the combat zone that qualifies B for hostile fire/imminent danger pay. On June 2, B is transferred for treatment to a hospital in the United States. B is hospitalized from June through October for those wounds. B is deemed to have incurred the wounds while serving in the combat zone on June 1. Accordingly, B is entitled to the exclusion under section 112 for June through October. Of course, B is also entitled to the exclusion for any month (May, in this example) in which B actually served in the combat zone.

*Example 3.* B is stationed in Nearby Country for the entire month of June as a member of a ground crew servicing combat aircraft operating in the combat zone. B's service in Nearby Country during June does not qualify B for hostile fire/imminent danger pay. Accordingly, B is not deemed to serve in the combat zone during June and is not entitled to the exclusion under section 112 for that month.

*Example 4.* B is assigned to an air unit stationed in Nearby Country for the entire month of June. In June, members of air units of the Armed Forces stationed in Nearby Country fly combat and supply missions into and over Destination Country in direct support of military operations in the combat zone. B flies combat missions over Destination Country from Nearby Country from June 1 through June 8. B's service qualifies B for hostile fire/imminent danger pay. Accordingly, B is deemed to serve in the combat zone during June and is entitled to the exclusion under section 112. The result would be the same if B were to fly supply missions into Destination Country from Nearby Country in direct support of operations in the combat zone qualifying B for hostile fire/imminent danger pay.

*Example 5.* Assigned to an air unit stationed in Nearby Country, B was killed in June when B's plane crashed on returning to the airbase in Nearby Country. B was performing military service in direct support of the military operations in the combat zone at the time of B's death. B's service also qualified B for hostile fire/imminent danger pay. B is deemed to have died while serving in the combat zone or to have died as a result of wounds, disease, or injury incurred while serving in the combat zone for purposes of section 692(a) and section 692(b) (providing relief from certain income taxes for members of the Armed Forces dying in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone) and section 2201 (providing relief from certain estate taxes for members of the Armed Forces dying in a combat zone or by reason of combat-zone-incurred wounds). The result would be the same if B's mission had been a supply mission instead of a combat mission.

*Example 6.* In June, B was killed as a result of an off-duty automobile accident while leaving the airbase in Nearby Country shortly after returning from a mission over Destination Country. At the time of B's death, B was not performing military duty qualifying B for hostile fire/imminent danger pay. B is not deemed to have died while serving in the combat zone or to have died as the result of wounds, disease, or injury incurred while serving in the combat zone. Accordingly, B does not qualify for the benefits of section 692(a), section 692(b), or section 2201.

*Example 7.* B performs military service in Nearby Country from June 1 through June 8 in direct support of the military operations in the combat zone. Nearby Country is designated as an area in which members of the Armed Forces qualify for hostile fire/imminent danger pay due to imminent danger, even though members in Nearby Country are not subject to hostile fire. B is deemed to serve in the combat zone from June 1 through June 8. Accordingly, B is entitled to the exclusion under section 112 for June.

(f) *Nonqualifying presence in combat zone*—(1) *Inapplicability of exclusion.* The following members of the Armed Forces are not deemed to serve in a combat zone within the meaning of section 112(a)(1) or section 112(b)(1) or to be hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone within the meaning of section 112(a)(2) or section 112(b)(2)—

(i) Members present in a combat zone while on leave from a duty station located outside a combat zone;

(ii) Members who pass over or through a combat zone during the course of a trip between two points both of which lie outside a combat zone; or

(iii) Members present in a combat zone solely for their own personal convenience.

(2) *Exceptions for temporary duty or special pay.* Paragraph (f)(1) of this section does not apply to members of the Armed Forces who—

(i) Are assigned on official temporary duty to a combat zone (including official temporary duty to the airspace of a combat zone); or

(ii) Qualify for hostile fire/imminent danger pay.

(3) *Examples of nonqualifying presence and its exceptions.* The examples in this paragraph (f)(3) are based on the following circumstances: Certain areas, airspace, and adjacent waters are designated as a combat zone for purposes of section 112 as of May 1. Some members of the Armed Forces are stationed in the combat zone; others are stationed in two foreign countries outside the combat zone, named Nearby Country and Destination Country.

*Example 1.* B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. On June 1, B voluntarily visits a city within the combat zone while on leave. B is not deemed to serve in a combat zone since B is present in a combat zone while on leave from a duty station located outside a combat zone.

*Example 2.* B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. During June, B takes authorized leave and elects to spend the leave period by visiting a city in the combat zone. While on leave in the combat zone, B is subject to hostile fire qualifying B for hostile fire/imminent danger pay. Although B is present in the combat zone while on leave from a duty station outside the combat zone, B qualifies for the exclusion under section 112 because B qualifies for hostile fire/imminent danger pay while in the combat zone.

*Example 3.* B is a member of the Armed Forces assigned to a ground unit stationed in the combat zone. During June, B takes authorized leave and elects to spend the leave period in the combat zone. B is not on leave from a duty station located outside a combat zone, nor is B present in a combat zone solely for B's own personal convenience. Accordingly, B's combat zone tax benefits continue while B is on leave in the combat zone.

*Example 4.* B is assigned as a navigator to an air unit stationed in Nearby Country. On June 4, during the course of a flight between B's home base in Nearby Country and another base in Destination Country, the aircraft on which B serves as a navigator flies over the combat zone. B is not on official temporary duty to the airspace of the combat zone and does not qualify for hostile fire/imminent danger pay as a result of the flight. Accordingly, B is not deemed to serve in a combat zone since B passes over the combat zone during the course of a trip between two points both of which lie outside the combat zone without either being on official temporary duty to the combat zone or qualifying for hostile fire/imminent danger pay.

*Example 5.* B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. B enters the combat zone on a 3-day pass. B is not on official temporary duty and does not qualify for hostile fire/imminent danger pay while present in the combat zone. Accordingly, B is not deemed to serve in a combat zone since B is present in the combat zone solely for B's own personal convenience.

*Example 6.* B, stationed in Nearby Country, is a military courier assigned on official temporary duty to deliver military pouches in the combat zone and in Destination Country. On June 1, B arrives in the combat zone from Nearby Country, and on June 2, B departs for Destination Country. Although B passes through the combat zone during the course of a trip between two points outside the combat zone, B is nevertheless deemed to serve in a combat zone while in the combat zone because B is assigned to the combat zone on official temporary duty.

*Example 7.* B is a member of an Armed Forces ground unit stationed in Nearby Country. On June 1, B took authorized leave and elected to spend the leave period by visiting a city in the combat zone. On June 2, while on leave in the combat zone, B was wounded by hostile fire qualifying B for hostile fire/imminent danger pay. On June 3, B was transferred for treatment to a hospital in the United States. B is hospitalized from June through October for those wounds. Although B was present in the combat zone while on leave from a duty station outside the combat zone, B is deemed to have incurred the wounds while serving in the combat zone on June 2, because B qualified for hostile fire/imminent danger pay while in the combat zone. Accordingly, B is entitled to the exclusion under section 112 for June through October.

*Example 8.* The facts are the same as in *Example 7* except that B dies on September 1 as a result of the wounds incurred in the combat zone. B is deemed to have died as a result of wounds, disease, or injury incurred while serving in the combat zone for purposes of section 692(a) and section 692(b) (providing relief from certain income taxes for members of the Armed Forces dying in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone) and section 2201 (providing relief from certain estate taxes for members of the Armed Forces dying in a combat zone or by reason of combat-zone-incurred wounds).

[T.D. 8489, 58 FR 47640, Sept. 10, 1993]

### § 1.113–1 Mustering-out payments for members of the Armed Forces.

For the purposes of the exclusion from gross income under section 113 of mustering-out payments with respect to service in the Armed Forces, mustering-out payments are payments made to any recipients pursuant to the provisions of 38 U.S.C. 2105 (formerly section 5 of the Mustering-out Payment Act of 1944 and section 505 of the Veterans' Readjustment Assistance Act of 1952).

### § 1.117–1 Exclusion of amounts received as a scholarship or fellowship grant.

(a) *In general.* Any amount received by an individual as a scholarship at an educational institution or as a fellowship grant, including the value of contributed services and accommodations, shall be excluded from the gross income of the recipient, subject to the limitations set forth in section 117(b) and § 1.117–2. The exclusion from gross income of an amount which is a scholarship or fellowship grant is controlled solely by section 117. Accordingly, to the extent that a scholarship or a fellowship grant exceeds the limitations of section 117(b) and § 1.117–2, it is includible in the gross income of the recipient notwithstanding the provisions of section 102 relating to exclusion from gross income of gifts, or section 74(b) relating to exclusion from gross income of certain prizes and awards. For definitions, see § 1.117–3.

(b) *Exclusion of amounts received to cover expenses.* (1) Subject to the limitations provided in subparagraph (2) of this paragraph, any amount received by an individual to cover expenses for travel (including meals and lodging while traveling and an allowance for travel of the individual's family), research, clerical help, or equipment is excludable from gross income provided that such expenses are incident to a scholarship or fellowship grant which is excludable from gross income under section 117(a)(1). If, however, only a portion of a scholarship or fellowship grant is excludable from gross income under section 117(a)(1) because of the part-time employment limitation contained in section 117(b)(1) or because of the expiration of the 36-month period described in section 117(b)(2)(B), only the amount received to cover expenses incident to such excludable portion is excludable from gross income. The requirement that these expenses be incident to the scholarship or the fellowship grant means that the expenses of travel, research, clerical help, or equipment must be incurred by the individual in order to effectuate the purpose for which the scholarship or the fellowship grant was awarded.

(2)(i) In the case of a scholarship or fellowship grant which is awarded after July 28, 1956, the exclusion provided under subparagraph (1) of this paragraph is not applicable unless the amount received by the individual is specifically designated to cover expenses for travel, research, clerical help, or equipment.

(ii) In the case of a scholarship or fellowship grant awarded before July 29, 1956, the exclusion provided under subparagraph (1) of this paragraph is not applicable unless the recipient establishes, by competent evidence, that the amount was received to cover expenses for travel, research, clerical help, or equipment, but such amount need not be specifically designated. The fact that the recipient actually incurred expenses for travel, research, clerical help, or equipment is not sufficient to establish that the amount was received to cover such expenses.

(iii) The exclusion provided under subparagraph (1) of this paragraph is applicable only to the extent that the amount received for travel, research, clerical help, or equipment is actually expended for such expenses by the recipient during the term of the scholarship or fellowship grant and within a reasonable time before and after such term.

(3) The portion of any amount received to cover the expenses described in subparagraph (1) of this paragraph which is not actually expended for such expenses within the exclusion period described in subparagraph (2) of this paragraph shall, if not returned to the grantor within this period, be included in the gross income of the recipient for the taxable year in which such exclusion period expires.

### § 1.117–2 Limitations.

(a) *Individuals who are candidates for degrees*—(1) *In general.* Under the limitations provided by section 117(b)(1) in the case of an individual who is a candidate for a degree at an educational institution, the exclusion from gross income shall not apply (except as otherwise provided in subparagraph (2) of this paragraph) to that portion of any amount received as payment for teaching, research, or other services in the nature of parttime employment required as a condition to receiving the scholarship or fellowship grant. Payments for such part-time employment shall be included in the gross income of the recipient in an amount determined by reference to the rate of compensation ordinarily paid for similar services performed by an individual who is not the recipient of a scholarship or a fellowship grant. A typical example of employment under this subparagraph is the case of an individual who is required, as a condition to receiving the scholarship or the fellowship grant, to perform part-time teaching services. A requirement that the individual shall furnish periodic reports to the grantor of the scholarship or the fellowship grant for the purpose of keeping the grantor informed as to the general progress of the individual shall not be deemed to constitute the performance of services in the nature of part-time employment.

(2) *Exception.* If teaching, research, or other services are required of all candidates (whether or not recipients of scholarships or fellowship grants) for a particular degree as a condition to receiving the degree, such teaching, research, or other services on the part of

the recipient of a scholarship or fellowship grant who is a candidate for such degree shall not be regarded as part-time employment within the meaning of this paragraph. Thus, if all candidates for a particular education degree are required, as part of their regular course of study or curriculum, to perform part-time practice teaching services, such services are not to be regarded as part-time employment within the meaning of this paragraph.

(b) *Individuals who are not candidates for degrees*—(1) *Conditions for exclusion.* In the case of an individual who is not a candidate for a degree at an educational institution, the exclusion from gross income of an amount received as a scholarship or a fellowship grant shall apply (to the extent provided in subparagraph (2) of this paragraph) only if the grantor of the scholarship or fellowship grant is—

(i) An organization described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) The United States or an instrumentality or agency thereof, or a State, a territory, or a possession of the United States, or any political subdivision thereof, or the District of Columbia, or

(iii) For taxable years beginning after December 31, 1961, a foreign government, an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to section 103 of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2453).

(2) *Extent of exclusion.* (i) In the case of an individual who is not a candidate for a degree, the amount received as a scholarship or a fellowship grant which is excludable from gross income under section 117(a)(1) shall not exceed an amount equal to $300 times the number of months for which the recipient received amounts under the scholarship or fellowship grant during the taxable year. In determining the number of months during the period for which the recipient received amounts under a scholarship or fellowship grant, computation shall be made on the basis of whole calendar months. A whole calendar month means a period of time terminating with the day of the succeeding month numerically corresponding to the day of the month of its beginning, less one, except that if there be no corresponding day of the succeeding month the period terminates with the last day of the succeeding month. For purposes of this computation a fractional part of a calendar month consisting of a period of time including 15 days or more shall be considered to be a whole calendar month and a fractional part of a calendar month consisting of a period of time including 14 days or less shall be disregarded. For example, if an individual receives a fellowship grant on September 13 which is to expire on June 12 of the following year, the grant shall be considered to have extended for a period of 9 months. If in the preceding example the grant expired on June 27, instead of June 12, the grant shall be considered to have extended for a period of 10 months.

(ii) No exclusion shall be allowed under section 117(a)(1) to an individual who is not a candidate for a degree after the recipient has, as an individual who is not a candidate for a degree, been entitled to an exclusion under that section for a period of 36 months. This limitation applies if the individual has received any amount which was either excluded or excludable from his gross income under section 117(a)(1) for any prior 36 months, whether or not consecutive. For example, if the individual received a fellowship grant of $7,200 for 3 years (which he elected to receive in 36 monthly installments of $200), his exclusion period would be exhausted even though he did not in any of the 36 months make use of the maximum exclusion. Accordingly, such individual would be entitled to no further exclusion from gross income with respect to any additional grants which he may receive as an individual who is not a candidate for a degree.

(iii) If an individual who is not a candidate for a degree receives amounts from more than one scholarship or fellowship grant during the taxable year, the total amounts received in the taxable year shall be aggregated for the purpose of computing the amount which may be excludable from gross income for such taxable year. If amounts are received from more than one scholarship or fellowship grant during the same month or months within the taxable year, such month or months shall be counted only once for the purpose of determining the number of months for which the individual received such amounts under the scholarships or fellowship grants during the taxable year. For example, if an individual receives a fellowship grant from one source for the months of January to June of the taxable year and also receives a fellowship grant from another source for the months of March through December of the same taxable year, he shall be considered to have received amounts for 12 months of the taxable year. See example (4) in subparagraph (3) of this paragraph for further illustration.

(3) *Examples*. The application of this paragraph may be further illustrated by the following examples, it being assumed that in each example the grantor is a grantor who is described in section 117(b)(2)(A) and subparagraph (1) of this paragraph:

*Example 1.* B, an individual who files his return on the calendar year basis, is awarded a post-doctorate fellowship grant in March 1955. The grant is to commence on September 1, 1955, and is to end on May 31, 1956, so that it will extend over a period of 9 months. The amount of the fellowship grant is $4,500 and B receives this amount in monthly installments of $500 on the first day of each month commencing September 1, 1955. During the taxable year 1955, B receives a total of $2,000 with respect to the 4-month period September through December, inclusive. He may exclude $1,200 from gross income in the taxable year 1955 ($300×4) and must include the remaining $800 in gross income for that year. For the year 1956, he will exclude $1,500 ($300×5) from gross income with respect to the $2,500 which he receives in that year and must include in gross income $1,000.

*Example 2.* Assume the same facts as in example (1) except that B receives the full amount of the grant ($4,500) on September 1, 1955. Since the amount received in the taxable year 1955 is for the full term of the fellowship grant (9 months), B may exclude $2,700 ($300×9) from gross income for the taxable year 1955. The remaining $1,800 must be included in gross income for that year.

*Example 3.* C, an individual who files his return on the calendar year basis, is awarded a post-doctorate fellowship grant in March 1955. The amount of the grant is $4,500 for a period commencing on September 1, 1955, and ending 24 months thereafter. C receives the full amount of the grant on September 1, 1955. C may exclude from gross income for the taxable year 1955, the full amount of the grant ($4,500) since this amount does not exceed an amount equal to $300 times the number of months (24) for which he received the amount of the grant during that taxable year.

*Example 4.* (i) F, an individual who files his return on the calendar year basis, is awarded a post-doctorate fellowship grant (Grant A) for two years commencing June 1, 1955, in the amount of $4,800. He elects to receive his grant in monthly installments of $200 commencing June 1, 1955. On March 1, 1956, F is awarded another post-doctorate fellowship grant (Grant B) for two years commencing September 1, 1956, in the amount of $7,200. He elects to receive this grant in monthly installments of $300 commencing September 1, 1956.

(ii) For the calendar year 1955, F receives $1,400 from Grant A which he is entitled to exclude from gross income since it does not exceed an amount equal to $300 times the number of months (7) for which he received amounts under the grant in the taxable year.

(iii) For the calendar year 1956, F receives $3,600 as the aggregate of amounts received under fellowship grants ($2,400 from Grant A and $1,200 from Grant B). F will be entitled to exclude the entire amount of $3,600 from gross income for the calendar year 1956 since such amount does not exceed an amount equal to $300 times the number of months (12) for which he received amounts under the grants in the taxable year.

(iv) For the calendar year 1957, F receives $4,600 as the aggregate of amounts received under fellowship grants ($1,000 from Grant A and $3,600 from Grant B). F will be entitled to exclude $3,600 ($300×12) from gross income for the calendar year 1957 and he will have to include $1,000 in gross income.

(v) For the calendar year 1958, F receives $2,400 from Grant B. F is entitled to exclude $1,500 ($300×5) from gross income for the calendar year 1958 and he will have to include $900 in gross income. While F receives amounts under fellowship Grant B for 8 months during the calendar year 1958, he is limited to an amount equal to $300 times 5 (months) because of the fact that he has already been entitled to exclude (and has in fact excluded) amounts received as a fellowship grant for a period of 31 months. Accordingly, he can only exclude amounts received under the fellowship grant for 5 months during the calendar year 1958, because of the 36-month limitation period. The fact that he was entitled to exclude only $1,400 ($200 a month for 7 months) instead of the maximum amount of $2,100 ($300×7) in 1955, is immaterial and the limitation period of 36 months is applicable.

(vi) The following chart illustrates the computation of the number of months for which F received amounts under the fellowship grants during the respective taxable years and the computation of the total amounts received under the fellowship grants during each taxable year:

| Period for which received and source | Number of months | Amounts received |
|---|---|---|
| 1955: | | |
| June 1 to December 31 | 7 | |
| Grant A | .............. | $1,400 |
| Grant B | .............. | None |
| Aggregate | 7 | 1,400 |
| 1956: | | |
| January 1 to August 31 | 8 | |
| Grant A | .............. | 1,600 |
| Grant B | .............. | None |
| September 1 to December 31 | 4 | |
| Grant A | .............. | 800 |
| Grant B | .............. | 1,200 |
| Aggregate | 12 | 3,600 |
| 1957: | | |
| January 1 to May 31 | 5 | |
| Grant A | .............. | 1,000 |
| Grant B | .............. | 1,500 |
| June 1 to December 31 | 7 | |
| Grant A | .............. | None |
| Grant B | .............. | 2,100 |
| Aggregate | 12 | 4,600 |
| 1958: | | |
| January 1 to August 31 | 8 | |
| Grant A | .............. | None |
| Grant B | .............. | 2,400 |
| Aggregate | .............. | 2,400 |

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6782, 29 FR 18355, Dec. 24, 1964]

### § 1.117–3 Definitions.

(a) *Scholarship.* A scholarship generally means an amount paid or allowed to, or for the benefit of, a student, whether an undergraduate or a graduate, to aid such individual in pursuing his studies. The term includes the value of contributed services and accommodations (see paragraph (d) of this section) and the amount of tuition, matriculation, and other fees which are furnished or remitted to a student to aid him in pursuing his studies. The term also includes any amount received in the nature of a family allowance as a part of a scholarship. However, the term does not include any amount provided by an individual to aid a relative, friend, or other individual in pursuing his studies where the grantor is motivated by family or philanthropic considerations. If an educational institution maintains or participates in a plan whereby the tuition of a child of a faculty member of such institution is remitted by any other participating educational institution attended by such child, the amount of the tuition so remitted shall be considered to be an amount received as a scholarship.

(b) *Educational organization.* For definition of ''educational organization'' paragraphs (a) and (b) of section 117 adopt the definition of that term which is prescribed in section 151(e)(4). Accordingly, for purposes of section 117 the term ''educational organization'' means only an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on. See section 151(e)(4) and regulations thereunder.

(c) *Fellowship grant.* A fellowship grant generally means an amount paid or allowed to, or for the benefit of, an individual to aid him in the pursuit of study or research. The term includes the value of contributed services and accommodations (see paragraph (d) of this section) and the amount of tuition, matriculation, and other fees which are furnished or remitted to an individual to aid him in the pursuit of study or research. The term also includes any amount received in the nature of a family allowance as a part of a fellowship grant. However, the term does not include any amount provided by an individual to aid a relative, friend, or other individual in the pursuit of study or research where the grantor is motivated by family or philanthropic considerations.

(d) *Contributed services and accommodations.* The term ''contributed services and accommodations'' means such services and accommodations as room, board, laundry service, and similar services or accommodations which are received by an individual as a part of a scholarship or fellowship grant.

(e) *Candidate for a degree.* The term ''candidate for a degree'' means an individual, whether an undergraduate or a graduate, who is pursuing studies or conducting research to meet the requirements for an academic or professional degree conferred by colleges or universities. It is not essential that such study or research be pursued or conducted at an educational institution which confers such degrees if the purpose thereof is to meet the requirements for a degree of a college or university which does confer such degrees. A student who receives a scholarship for study at a secondary school or other educational institution is considered to be a "candidate for a degree."

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, as amended by T.D. 8032, 50 FR 27232, July 2, 1985]

### § 1.117–4 Items not considered as scholarships or fellowship grants.

The following payments or allowances shall not be considered to be amounts received as a scholarship or a fellowship grant for the purpose of section 117:

(a) *Educational and training allowances to veterans.* Educational and training allowances to a veteran pursuant to section 400 of the Servicemen's Readjustment Act of 1944 (58 Stat. 287) or pursuant to 38 U.S.C. 1631 (formerly section 231 of the Veterans' Readjustment Assistance Act of 1952).

(b) *Allowances to members of the Armed Forces of the United States.* Tuition and subsistence allowances to members of the Armed Forces of the United States who are students at an educational institution operated by the United States or approved by the United States for their education and training, such as the United States Naval Academy and the United States Military Academy.

(c) *Amounts paid as compensation for services or primarily for the benefit of the grantor.* (1) Except as provided in paragraph (a) of §§ 1.117–2 and 1.117–5, any amount paid or allowed to, or on behalf of, an individual to enable him to pursue studies or research, if such amount represents either compensation for past, present, or future employment services or represents payment for services which are subject to the direction or supervision of the grantor.

(2) Any amount paid or allowed to, or on behalf of, an individual to enable him to pursue studies or research primarily for the benefit of the grantor.

However, amounts paid or allowed to, or on behalf of, an individual to enable him to pursue studies or research are considered to be amounts received as a scholarship or fellowship grant for the purpose of section 117 if the primary purpose of the studies or research is to further the education and training of the recipient in his individual capacity and the amount provided by the grantor for such purpose does not represent compensation or payment for the services described in subparagraph (1) of this paragraph. Neither the fact that the recipient is required to furnish reports of his progress to the grantor, nor the fact that the results of his studies or research may be of some incidental benefits to the grantor shall, of itself, be considered to destroy the essential character of such amount as a scholarship or fellowship grant.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, as amended by T.D. 8032, 50 FR 27232, July 2, 1985]

### § 1.117–5 Federal grants requiring future service as a Federal employee.

(a) *In general.* Under section 117(c), amounts received by an individual under a Federal program as a scholarship or grant for qualified tuition and expenses at an institution of higher education are excluded from the gross income of the recipient even though the recipient is required to perform future service as a Federal employee. See paragraph (c) of this section for the definitions of the terms "qualified tuition and expenses" and "institution of higher education."

(b) *Exception for uniformed services scholarship programs.* The requirements of this section do not apply to amounts received before 1985 by a member of a uniformed service who entered training before 1981 under the Armed Forces Health Professions Scholarship Program, National Public Health Service Corps Scholarship Training Program, or other substantially similar Federal programs requiring the recipient to work for a uniformed Federal service after completion of studies. These awards are governed by section 4 of Pub. L. 93–483 as amended by Pub. L. 95–171, Pub. L. 95–600 and Pub. L. 96–167. See section 101(3) of title 37, United States Code for the definition of the term "uniformed service."

(c) *Definitions*—(1) *Qualified tuition and related expenses.* For purposes of section 117(c) and this section, qualified tuition and related expenses are those amounts which under the terms of the Federal program are required to be used and in fact are used for payment of:

(i) Tuition and fees that are required for the recipient's enrollment or attendance at an institution of higher education; and

(ii) Those amounts used for payment of fees, books, supplies and equipment required for courses of instruction at such an institution.

Incidental expenses are not considered related expenses and thus are not excludable from gross income under section 117(c). Incidental expenses include room and board at an institution of higher education, expenses for travel (including expenses for meals and lodging incurred during travel and allowances for travel of the recipient's family), research, clerical help, equipment and other expenses which are not required for enrollment at the institution or in a course of instruction at such institution.

(2) *Institution of higher education.* To qualify as an institution of higher education under this section, the institution must be a public or other nonprofit institution in any state which—

(i) Admits as regular students only individuals who have a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) Is legally authorized within the state to provide a program of education beyond high school; and

(iii) Provides an education program for which it awards a bachelor's or higher degree or which is acceptable for full credit towards such a degree, or which trains and prepares students for gainful employment in a recognized health profession. For purposes of this section, recognized health professions are those health professions which are supervised or monitored by appropriate state or Federal agencies or governing professional associations and which require members to be currently licensed or certified in order to practice.

(3) *Service as a Federal employee*—(i) *In general.* Except as otherwise provided in paragraph (c)(3)(ii) of this section, service as a Federal employee refers to employment of the recipient by the Federal government to work directly for the Federal government. Thus, Federal grants or scholarships which do not require the recipient to work directly for the Federal government are not governed by the rules of this section.

(ii) *Service in a health manpower shortage area.* For purposes of this section an obligation under a grant for the recipient to serve in a health related field in a health manpower shortage area as designated by the Secretary of Health and Human Services according to the criteria of the Public Health Services Act (42 U.S.C. 254(e)) and the regulations promulgated thereunder (42 CFR 5.1–5.4) will be considered an obligation to serve as a Federal employee.

(d) *Records required for exclusion from gross income.* To exclude amounts received under Federal programs requiring future services as a Federal employee, the recipient must maintain records that establish that the amounts received under such programs were used for qualified tuition and related expenses as defined in paragraph (c)(1) of this section. Qualifying uses may be established by providing to the Service, upon request, copies of relevant bills, receipts, cancelled checks or other convenient documentation or records which clearly reflect the use of the money received under the grant. The recipient must also submit, upon request, documentation establishing receipt of the grant and setting out the terms and requirements of the particular grant.

(e) *Applicability of rules of §§ 117(a) and 117(b).* Except where a different rule has been expressly provided in this section, amounts received under Federal grants requiring future service as a Federal employee, and which meet the requirements for exclusion from gross income under this section, are subject to the rules, limitations and definitions specified in §§ 117 (a) and (b) of the Code and §§ 1.117–1 through 1.117–4.

(f) *Effective date.* Except as provided in paragraph (b) of this section, this section will apply to amounts received after December 31, 1980 under Federal programs which meet the requirements of this section.

[T.D. 8032, 50 FR 27232, July 2, 1985]

**§ 1.118–1 Contributions to the capital of a corporation.**

In the case of a corporation, section 118 provides an exclusion from gross income with respect to any contribution of money or property to the capital of the taxpayer. Thus, if a corporation requires additional funds for conducting its business and obtains such funds through voluntary pro rata payments by its shareholders, the amounts so received being credited to its surplus account or to a special account, such amounts do not constitute income, although there is no increase in the outstanding shares of stock of the corporation. In such a case the payments are in the nature of assessments upon, and represent an additional price paid for, the shares of stock held by the individual shareholders, and will be treated as an addition to and as a part of the operating capital of the company. Section 118 also applies to contributions to capital made by persons other than shareholders. For example, the exclusion applies to the value of land or other property contributed to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities. However, the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered, or to subsidies paid for the purpose of inducing the taxpayer to limit production. See section 362 for the basis of property acquired by a corporation through a contribution to its capital by its stockholders or by nonstockholders.

**§ 1.118–2 Contribution in aid of construction.**

(a) *Special rule for water and sewerage disposal utilities*—(1) *In general.* For purposes of section 118, the term *contribution to the capital of the taxpayer* includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility that provides water or sewerage disposal services if—

(i) The amount is a contribution in aid of construction under paragraph (b) of this section;

(ii) In the case of a contribution of property other than water or sewerage disposal facilities, the amount satisfies the expenditure rule under paragraph (c) of this section; and

(iii) The amount (or any property acquired or constructed with the amount) is not included in the taxpayer's rate base for ratemaking purposes.

(2) *Definitions*—(i) *Regulated public utility* has the meaning given such term by section 7701(a)(33), except that such term does not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(ii) *Water or sewerage disposal facility* is defined as tangible property described in section 1231(b) that is used predominately (80% or more) in the trade or business of furnishing water or sewerage disposal services.

(b) *Contribution in aid of construction*—(1) *In general.* For purposes of section 118(c) and this section, the term *contribution in aid of construction* means any amount of money or other property contributed to a regulated public utility that provides water or sewerage disposal services to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's water or sewerage disposal facilities.

(2) *Advances.* A contribution in aid of construction may include an amount of money or other property contributed to a regulated public utility for a water or sewerage disposal facility subject to a contingent obligation to repay the amount, in whole or in part, to the contributor (commonly referred to as an advance). For example, an amount received by a utility from a developer to construct a water facility pursuant to an agreement under which the utility will pay the developer a percentage of the receipts from the facility over a fixed period may constitute a contribution in aid of construction. Whether an advance is a contribution or a loan is determined under general principles of federal tax law based on all the facts and circumstances. For the treatment of any amount of a contribution in aid of construction that is repaid by the

utility to the contributor, see paragraphs (c)(2)(ii) and (d)(2) of this section.

(3) *Customer connection fee*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, a customer connection fee is not a contribution in aid of construction under this paragraph (b) and generally is includible in income. The term *customer connection fee* includes any amount of money or other property transferred to the utility representing the cost of installing a connection or service line (including the cost of meters and piping) from the utility's main water or sewer lines to the line owned by the customer or potential customer. A customer connection fee also includes any amount paid as a service charge for starting or stopping service.

(ii) *Exceptions*—(A) *Multiple customers.* Money or other property contributed for a connection or service line from the utility's main line to the customer's or the potential customer's line is not a customer connection fee if the connection or service line serves, or is designed to serve, more than one customer. For example, a contribution for a split service line that is designed to serve two customers is not a customer connection fee. On the other hand, if a water or sewerage disposal utility treats an apartment or office building as one utility customer, then the cost of installing a connection or service line from the utility's main water or sewer lines serving that single customer is a customer connection fee.

(B) *Fire protection services.* Money or other property contributed for public and private fire protection services is not a customer connection fee.

(4) *Reimbursement for a facility previously placed in service*—(i) *In general.* If a water or sewerage disposal facility is placed in service by the utility before an amount is contributed to the utility, the contribution is not a contribution in aid of construction under this paragraph (b) with respect to the cost of the facility unless, no later than 8½ months after the close of the taxable year in which the facility was placed in service, there is an agreement, binding under local law, that the utility is to receive the amount as reimbursement for the cost of acquiring or constructing the facility. An order or tariff, binding under local law, that is issued or approved by the applicable public utility commission requiring current or prospective utility customers to reimburse the utility for the cost of acquiring or constructing the facility, is a binding agreement for purposes of the preceding sentence. If an agreement exists, the basis of the facility must be reduced by the amount of the expected contributions. Appropriate adjustments must be made if actual contributions differ from expected contributions.

(ii) *Example.* The application of paragraph (b)(4)(i) of this section is illustrated by the following example:

*Example.* M, a calendar year regulated public utility that provides water services, spent $1,000,000 for the construction of a water facility that can serve 200 customers. M placed the facility in service in 2000. In June 2001, the public utility commission that regulates M approves a tariff requiring new customers to reimburse M for the cost of constructing the facility by paying a service availability charge of $5,000 per lot. Pursuant to the tariff, M expects to receive reimbursements for the cost of the facility of $100,000 per year for the years 2001 through 2010. The reimbursements are contributions in aid of construction under paragraph (b) of this section because no later than 8½ months after the close of the taxable year in which the facility was placed in service there was a tariff, binding under local law, approved by the public utility commission requiring new customers to reimburse the utility for the cost of constructing the facility. The basis of the $1,000,000 facility is zero because the expected contributions equal the cost of the facility.

(5) *Classification by ratemaking authority.* The fact that the applicable ratemaking authority classifies any money or other property received by a utility as a contribution in aid of construction is not conclusive as to its treatment under this paragraph (b).

(c) *Expenditure rule*—(1) *In general.* An amount satisfies the expenditure rule of section 118(c)(2) if the amount is expended for the acquisition or construction of property described in section 118(c)(2)(A), the amount is paid or incurred before the end of the second taxable year after the taxable year in which the amount was received as required by section 118(c)(2)(B), and accurate records are kept of contributions and expenditures as provided in section 118(c)(2)(C).

(2) *Excess amount*—(i) *Includible in the utility's income.* An amount received by a utility as a contribution in aid of construction that is not expended for the acquisition or construction of water or sewerage disposal facilities as required by paragraph (c)(1) of this section (the excess amount) is not a contribution to the capital of the taxpayer under paragraph (a) of this section. Except as provided in paragraph (c)(2)(ii) of this section, such excess amount is includible in the utility's income in the taxable year in which the amount was received.

(ii) *Repayment of excess amount.* If the excess amount described in paragraph (c)(2)(i) of this section is repaid, in whole or in part, either—

(A) Before the end of the time period described in paragraph (c)(1) of this section, the repayment amount is not includible in the utility's income; or

(B) After the end of the time period described in paragraph (c)(1) of this section, the repayment amount may be deducted by the utility in the taxable year in which it is paid or incurred to the extent such amount was included in income.

(3) *Example.* The application of this paragraph (c) is illustrated by the following example:

*Example.* M, a calendar year regulated public utility that provides water services, received a $1,000,000 contribution in aid of construction in 2000 for the purpose of constructing a water facility. To the extent that the $1,000,000 exceeded the actual cost of the facility, the contribution was subject to being returned. In 2001, M built the facility at a cost of $700,000 and returned $200,000 to the contributor. As of the end of 2002, M had not returned the remaining $100,000. Assuming accurate records are kept, the requirement under section 118(c)(2) is satisfied for $700,000 of the contribution. Because $200,000 of the contribution was returned within the time period during which qualifying expenditures could be made, this amount is not includible in M's income. However, the remaining $100,000 is includible in M's income for its 2000 taxable year (the taxable year in which the amount was received) because the amount was neither spent nor repaid during the prescribed time period. To the extent M repays the remaining $100,000 after year 2002, M would be entitled to a deduction in the year such repayment is paid or incurred.

(d) *Adjusted basis*—(1) *Exclusion from basis.* Except for a repayment described in paragraph (d)(2) of this section, to the extent that a water or sewerage disposal facility is acquired or constructed with an amount received as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the facility is reduced by the amount of the contribution. To the extent the water or sewerage disposal facility is acquired as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the contributed facility is zero.

(2) *Repayment of contribution.* If a contribution to the capital of the taxpayer under paragraph (a) of this section is repaid to the contributor, either in whole or in part, then the repayment amount is a capital expenditure in the taxable year in which it is paid or incurred, resulting in an increase in the property's adjusted basis in such year. Capital expenditures allocated to depreciable property under paragraph (d)(3) of this section may be depreciated over the remaining recovery period for that property.

(3) *Allocation of contributions.* An amount treated as a capital expenditure under this paragraph (d) is to be allocated proportionately to the adjusted basis of each property acquired or constructed with the contribution based on the relative cost of such property.

(4) *Example.* The application of this paragraph (d) is illustrated by the following example:

*Example.* A, a calendar year regulated public utility that provides water services, received a $1,000,000 contribution in aid of construction in 2000 as an advance from B, a developer, for the purpose of constructing a water facility. To the extent that the $1,000,000 exceeds the actual cost of the facility, the contribution is subject to being returned. Under the terms of the advance, A agrees to pay to B a percentage of the receipts from the facility over a fixed period, but limited to the cost of the facility. In 2001, A builds the facility at a cost of $700,000 and returns $300,000 to B. In 2002, A pays $20,000 to B out of the receipts from the facility. Assuming accurate records are kept, the $700,000 advance is a contribution to the capital of A under paragraph (a) of this section and is excludable from A's income. The basis of the $700,000 facility constructed with this contribution to capital is zero. The $300,000 excess amount is not a contribution to the capital of A under paragraph (a) of this section because it does not meet the expenditure rule described in paragraph (c)(1) of this section. However, this excess amount is not includible in A's income pursuant to paragraph (c)(2)(ii) of this section since the amount is repaid to B within the required time period. The repayment of the $300,000 excess amount to B in 2001 is not treated as a capital expenditure by A. The $20,000 payment to B in 2002 is treated as a capital expenditure by A in 2002 resulting in an increase in the adjusted basis of the water facility from zero to $20,000.

(e) *Statute of limitations*—(1) *Extension of statute of limitations*. Under section 118(d)(1), the statutory period for assessment of any deficiency attributable to a contribution to capital under paragraph (a) of this section does not expire before the expiration of 3 years after the date the taxpayer notifies the Secretary in the time and manner prescribed in paragraph (e)(2) of this section.

(2) *Time and manner of notification*. Notification is made by attaching a statement to the taxpayer's federal income tax return for the taxable year in which any of the reportable items in paragraphs (e)(2)(i) through (iii) of this section occur. The statement must contain the taxpayer's name, address, employer identification number, taxable year, and the following information with respect to contributions of property other than water or sewerage disposal facilities that are subject to the expenditure rule described in paragraph (c) of this section—

(i) The amount of contributions in aid of construction expended during the taxable year for property described in section 118(c)(2)(A) (qualified property) as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received;

(ii) The amount of contributions in aid of construction that the taxpayer does not intend to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received; and

(iii) The amount of contributions in aid of construction that the taxpayer failed to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(f) *Effective date*. This section is applicable for any money or other property received by a regulated public utility that provides water or sewerage disposal services on or after January 11, 2001.

[T.D. 8936, 66 FR 2254, Jan. 11, 2001]

## § 1.119–1 Meals and lodging furnished for the convenience of the employer.

(a) *Meals*—(1) *In general*. The value of meals furnished to an employee by his employer shall be excluded from the employee's gross income if two tests are met: (i) The meals are furnished on the business premises of the employer, and (ii) the meals are furnished for the convenience of the employer. The question of whether meals are furnished for the convenience of the employer is one of fact to be determined by analysis of all the facts and circumstances in each case. If the tests described in subdivisions (i) and (ii) of this subparagraph are met, the exclusion shall apply irrespective of whether under an employment contract or a statute fixing the terms of employment such meals are furnished as compensation.

(2) *Meals furnished without a charge*. (i) Meals furnished by an employer without charge to the employee will be regarded as furnished for the convenience of the employer if such meals are furnished for a substantial noncompensatory business reason of the employer. If an employer furnishes meals as a means of providing additional compensation to his employee (and not for a substantial noncompensatory business reason of the employer), the meals so furnished will not be regarded as furnished for the convenience of the employer. Conversely, if the employer furnishes meals to his employee for a substantial noncompensatory business reason, the meals so furnished will be regarded as furnished for the convenience of the employer, even though such meals are also furnished for a compensatory reason. In determining the reason of an employer for furnishing meals, the mere declaration that meals are furnished for a noncompensatory business reason is not

sufficient to prove that meals are furnished for the convenience of the employer, but such determination will be based upon an examination of all the surrounding facts and circumstances. In subdivision (ii) of this subparagraph, there are set forth some of the substantial noncompensatory business reasons which occur frequently and which justify the conclusion that meals furnished for such a reason are furnished for the convenience of the employer. In subdivision (iii) of this subparagraph, there are set forth some of the business reasons which are considered to be compensatory and which, in the absence of a substantial noncompensatory business reason, justify the conclusion that meals furnished for such a reason are not furnished for the convenience of the employer. Generally, meals furnished before or after the working hours of the employee will not be regarded as furnished for the convenience of the employer, but see subdivision (ii) (*d*) and (*f*) of this subparagraph for some exceptions to this general rule. Meals furnished on nonworking days do not qualify for the exclusion under section 119. If the employee is required to occupy living quarters on the business premises of his employer as a condition of his employment (as defined in paragraph (b) of this section), the exclusion applies to the value of any meal furnished without charge to the employee on such premises.

(ii)(*a*) Meals will be regarded as furnished for a substantial noncompensatory business reason of the employer when the meals are furnished to the employee during his working hours to have the employee available for emergency call during his meal period. In order to demonstrate that meals are furnished to the employee to have the employee available for emergency call during the meal period, it must be shown that emergencies have actually occurred, or can reasonably be expected to occur, in the employer's business which have resulted, or will result, in the employer calling on the employee to perform his job during his meal period.

(*b*) Meals will be regarded as furnished for a substantial noncompensatory business reason of the employer when the meals are furnished to the employee during his working hours because the employer's business is such that the employee must be restricted to a short meal period, such as 30 or 45 minutes, and because the employee could not be expected to eat elsewhere in such a short meal period. For example, meals may qualify under this subdivision when the employer is engaged in a business in which the peak work load occurs during the normal lunch hours. However, meals cannot qualify under this subdivision (*b*) when the reason for restricting the time of the meal period is so that the employee can be let off earlier in the day.

(*c*) Meals will be regarded as furnished for a substantial noncompensatory business reason of the employer when the meals are furnished to the employee during his working hours because the employee could not otherwise secure proper meals within a reasonable meal period. For example, meals may qualify under this subdivision (*c*) when there are insufficient eating facilities in the vicinity of the employer's premises.

(*d*) A meal furnished to a restaurant employee or other food service employee for each meal period in which the employee works will be regarded as furnished for a substantial noncompensatory business reason of the employer, irrespective of whether the meal is furnished during, immediately before, or immediately after the working hours of the employee.

(*e*) If the employer furnishes meals to employees at a place of business and the reason for furnishing the meals to each of substantially all of the employees who are furnished the meals is a substantial noncompensatory business reason of the employer, the meals furnished to each other employee will also be regarded as furnished for a substantial noncompensatory business reason of the employer.

(*f*) If an employer would have furnished a meal to an employee during his working hours for a substantial noncompensatory business reason, a meal furnished to such an employee immediately after his working hours because his duties prevented him from obtaining a meal during his working hours will be regarded as furnished for a substantial noncompensatory business reason.

(iii) Meals will be regarded as furnished for a compensatory business reason of the employer when the meals are furnished to the employee to promote the morale or goodwill of the employee, or to attract prospective employees.

(3) *Meals furnished with a charge.* (i) If an employer provides meals which an employee may or may not purchase, the meals will not be regarded as furnished for the convenience of the employer. Thus, meals for which a charge is made by the employer will not be regarded as furnished for the convenience of the employer if the employee has a choice of accepting the meals and paying for them or of not paying for them and providing his meals in another manner.

(ii) If an employer furnishes an employee meals for which the employee is charged an unvarying amount (for example, by subtraction from his stated compensation) irrespective of whether he accepts the meals, the amount of such flat charge made by the employer for such meals is not, as such, part of the compensation includible in the gross income of the employee; whether the value of the meals so furnished is excludable under section 119 is determined by applying the rules of subparagraph (2) of this paragraph. If meals furnished for an unvarying amount are not furnished for the convenience of the employer in accordance with the rules of subparagraph (2) of this paragraph, the employee shall include in gross income the value of the meals regardless of whether the value exceeds or is less than the amount charged for such meals. In the absence of evidence to the contrary, the value of the meals may be deemed to be equal to the amount charged for them.

(b) *Lodging.* The value of lodging furnished to an employee by the employer shall be excluded from the employee's gross income if three tests are met:

(1) The lodging is furnished on the business premises of the employer,

(2) The lodging is furnished for the convenience of the employer, and

(3) The employee is required to accept such lodging as a condition of his employment.

The requirement of subparagraph (3) of this paragraph that the employee is required to accept such lodging as a condition of his employment means that he be required to accept the lodging in order to enable him properly to perform the duties of his employment. Lodging will be regarded as furnished to enable the employee properly to perform the duties of his employment when, for example, the lodging is furnished because the employee is required to be available for duty at all times or because the employee could not perform the services required of him unless he is furnished such lodging. If the tests described in subparagraphs (1), (2), and (3) of this paragraph are met, the exclusion shall apply irrespective of whether a charge is made, or whether, under an employment contract or statute fixing the terms of employment, such lodging is furnished as compensation. If the employer furnishes the employee lodging for which the employee is charged an unvarying amount irrespective of whether he accepts the lodging, the amount of the charge made by the employer for such lodging is not, as such, part of the compensation includible in the gross income of the employee; whether the value of the lodging is excludable from gross income under section 119 is determined by applying the other rules of this paragraph. If the tests described in subparagraph (1), (2), and (3) of this paragraph are not met, the employee shall include in gross income the value of the lodging regardless of whether it exceeds or is less than the amount charged. In the absence of evidence to the contrary, the value of the lodging may be deemed to be equal to the amount charged.

(c) *Business premises of the employer*—(1) *In general.* For purposes of this section, the term ''business premises of the employer'' generally means the place of employment of the employee. For example, meals and lodging furnished in the employer's home to a domestic servant would constitute meals and lodging furnished on the business premises of the employer. Similarly, meals furnished to cowhands while herding their employer's cattle on leased land would be regarded as furnished on the business premises of the employer.

(2) *Certain camps.* For taxable years beginning after December 31, 1981, in the case of an individual who is furnished lodging by or on behalf of his employer in a camp (as defined in paragraph (d) of this section) in a foreign country (as defined in §1.911–2(h)), the camp shall be considered to be part of the business premises of the employer.

(d) *Camp defined*—(1) *In general.* For the purposes of paragraph (c)(2) of this section, a camp is lodging that is all of the following:

(i) Provided by or on behalf of the employer for the convenience of the employer because the place at which the employee renders services is in a remote area where satisfactory housing is not available to the employee on the open market within a reasonable commuting distance of that place;

(ii) Located, as near as practicable, in the vicinity of the place at which the employee renders services; and

(iii) Furnished in a common area or enclave which is not available to the general public for lodging or accommodations and which normally accommodates ten or more employees.

(2) *Satisfactory housing.* For purposes of paragraph (d)(1)(i) of this section, facts and circumstances that may be relevant in determining whether housing available to the employee is satisfactory include, but are not limited to, the size and condition of living space and the availability and quality of utilities such as water, sewers or other waste disposal facilities, electricity, or heat. The general environment in which housing is located (e.g., climate, prevalence of insects, etc.) does not of itself make housing unsatisfactory. The general environment is relevant, however, if housing is inadequate to protect the occupants from environmental conditions. The individual employee's income level is not relevant in determining whether housing is satisfactory; it may, however, be relevant in determining whether satisfactory housing is available to the employee (see paragraph (d)(3)(i)(B) of this section).

(3) *Availability of satisfactory housing*—(i) *Facts and circumstances.* For purposes of paragraph (d)(1)(i) of this section, facts and circumstances to be considered in determining whether satisfactory housing is available to the employee on the open market include but are not limited to:

(A) The number of housing units available on the open market in relation to the number of housing units required for the employer's employees;

(B) The cost of housing available on the open market;

(C) The quality of housing available on the open market; and

(D) The presence of warfare or civil insurrection within the area where housing would be available which would subject U.S. citizens to unusual risk of personal harm or property loss.

(ii) *Presumptions.* Satisfactory housing will generally be considered to be unavailable to the employee on the open market if either of the following conditions is satisfied:

(A) The foreign government requires the employer to provide housing for its employees other than housing available on the open market; or

(B) An unrelated person awarding work to the employer requires that the employer's employees occupy housing specified by such unrelated person.

The condition of either paragraph (d)(3)(ii) (A) or (B) of this section is not satisfied if the requirement described therein and imposed either by a foreign government or unrelated person applies primarily to U.S. employers and not to a significant number of third country employers or applies primarily to employers of U.S. employees and not to a significant number of employers of third country employees.

(4) *Reasonable commuting distance.* For purposes of paragraph (d)(1)(i) of this section, in determining whether a commuting distance is reasonable, the accessibility of the place at which the employee renders services due to geographic factors, the quality of the roads, the customarily available transportation, and the usual travel time (at the time of day such travel would be required) to the place at which the employee renders services shall be taken into account.

(5) *Common area or enclave.* A cluster of housing units does not satisfy paragraph (d)(1)(iii) of this section if it is

adjacent to or surrounded by substantially similar housing available to the general public. Two or more common areas or enclaves that house employees who work on the same project (for example, a highway project) are considered to be one common area or enclave in determining whether they normally accommodate ten or more employees.

(e) *Rules.* The exclusion provided by section 119 applies only to meals and lodging furnished in kind by or on behalf of an employer to his employee. If the employee has an option to receive additional compensation in lieu of meals or lodging in kind, the value of such meals and lodging is not excludable from gross income under section 119. However, the mere fact that an employee, at his option, may decline to accept meals tendered in kind will not of itself require inclusion of the value thereof in gross income. Cash allowances for meals or lodging received by an employee are includible in gross income to the extent that such allowances constitute compensation.

(f) *Examples.* The provisions of section 119 may be illustrated by the following examples:

*Example 1.* A waitress who works from 7 a.m. to 4 p.m. is furnished without charge two meals a work day. The employer encourages the waitress to have her breakfast on his business premises before starting work, but does not require her to have breakfast there. She is required, however, to have her lunch on such premises. Since the waitress is a food service employee and works during the normal breakfast and lunch periods, the waitress is permitted to exclude from her gross income both the value of the breakfast and the value of the lunch.

*Example 2.* The waitress in example (1) is allowed to have meals on the employer's premises without charge on her days off. The waitress is not permitted to exclude the value of such meals from her gross income.

*Example 3.* A bank teller who works from 9 a.m. to 5 p.m. is furnished his lunch without charge in a cafeteria which the bank maintains on its premises. The bank furnishes the teller such meals in order to limit his lunch period to 30 minutes since the bank's peak work load occurs during the normal lunch period. If the teller had to obtain his lunch elsewhere, it would take him considerably longer than 30 minutes for lunch, and the bank strictly enforces the 30-minute time limit. The bank teller may exclude from his gross income the value of such meals obtained in the bank cafeteria.

*Example 4.* Assume the same facts as in example (3), except that the bank charges the bank teller an unvarying rate per meal regardless of whether he eats in the cafeteria. The bank teller is not required to include in gross income such flat amount charged as part of his compensation, and he is entitled to exclude from his gross income the value of the meals he receives for such flat charge.

*Example 5.* A Civil Service employee of a State is employed at an institution and is required by his employer to be available for duty at all times. The employer furnishes the employee with meals and lodging at the institution without charge. Under the applicable State statute, his meals and lodging are regarded as part of the employee's compensation. The employee would nevertheless be entitled to exclude the value of such meals and lodging from his gross income.

*Example 6.* An employee of an institution is given the choice of residing at the institution free of charge, or of residing elsewhere and receiving a cash allowance in addition to his regular salary. If he elects to reside at the institution, the value to the employee of the lodging furnished by the employer will be includible in the employee's gross income because his residence at the institution is not required in order for him to perform properly the duties of his employment.

*Example 7.* A construction worker is employed at a construction project at a remote job site in Alaska. Due to the inaccessibility of facilities for the employees who are working at the job site to obtain food and lodging and the prevailing weather conditions, the employer is required to furnish meals and lodging to the employee at the camp site in order to carry on the construction project. The employee is required to pay $40 a week for the meals and lodging. The weekly charge of $40 is not, as such, part of the compensation includible in the gross income of the employee, and under paragraphs (a) and (b) of this section the value of the meals and lodging is excludable from his gross income.

*Example 8.* A manufacturing company provides a cafeteria on its premises at which its employees can purchase their lunch. There is no other eating facility located near the company's premises, but the employee can furnish his own meal by bringing his lunch. The amount of compensation which any employee is required to include in gross income is not reduced by the amount charged for the meals, and the meals are not considered to be furnished for the convenience of the employer.

*Example 9.* A hospital maintains a cafeteria on its premises where all of its 230 employees may obtain a meal during their working hours. No charge is made for these meals. The hospital furnishes such meals in order to have each of 210 of the employees available for any emergencies that may occur, and it is shown that each such employee is at times called upon to perform services during his meal period. Although the hospital does not require such employees to remain on the premises during meal periods, they rarely leave the hospital during their meal period. Since the hospital furnishes meals to each of substantially all of its employees in order to have each of them available for emergency call during his meal period, all of the hospital employees who obtain their meals in the hospital cafeteria may exclude from their gross income the value of such meals.

[T.D. 6745, 29 FR 9380, July 9, 1964, as amended by T.D. 8006, 50 FR 2964, Jan. 23, 1985]

### § 1.120–1 Statutory subsistence allowance received by police.

(a) Section 120 excludes from the gross income of an individual employed as a police official by a State, Territory, or possession of the United States, by any of their political subdivisions, or by the District of Columbia, any amount received as a statutory subsistence allowance to the extent that such allowance does not exceed $5 per day. For purposes of this section, the term ''statutory subsistence allowance'' means an amount which is designated as a subsistence allowance under the laws of a State, a Territory, or a possession of the United States, any political subdivision of any of the foregoing, or the District of Columbia and which is paid to an individual who is employed as a police official of such governmental unit. A subsistence allowance paid to a police official by any of the foregoing governmental units which is not so provided by statute may not be excluded from gross income under the provisions of section 120. The term ''police official'' includes an employee of any of the foregoing governmental units who has police duties, such as a sheriff, a detective, a policeman, or a State police trooper, however designated.

(b) The exclusion provided by section 120 is to be computed on a daily basis, that is, for each day for which the statutory allowance is paid. If the statute providing the allowance does not specify the daily amount of such allowance, the allowance shall be converted to a daily basis for the purpose of applying the limitation provided herein. For example, if a State statute provides for a weekly subsistence allowance, the daily amount is to be determined by dividing the weekly amount by the number of days for which the allowance is paid. Thus, if a State trooper receives a weekly statutory subsistence allowance of $40 would be $8, that is, $40 divided by 5 for 5 days of the week, the daily amount would be $8, that is, $40 divided by 5. However, for purposes of this section, only $5 per day may be excluded, or $25 on a weekly basis.

(c) Expenses in respect of which the allowance under section 120 is paid may not be deducted under any provision of the income tax laws except to the extent that (1) such expenses exceed the amount of the exclusion, and (2) the excess is otherwise allowable as a deduction. For example, if a State statute provides a subsistence allowance of $3 per day and the taxpayer, a state trooper, incurs expenditures of $4.50 for meals while away from home overnight on official police duties only $3 would be excludable under this section. Expenses relating to such exclusion ($3) may not be deducted under any provision of the income tax laws. However, the remaining $1.50 may be an allowable deduction under section 162 as traveling expenses while away from home in the performance of official duties. See §1.162–2.

(d) In the case of taxable years ending after September 30, 1958, section 120 and this section do not apply to amounts received as a statutory subsistence allowance for any day after September 30, 1958.

### § 1.120–3 Notice of application for recognition of status of qualified group legal services plan.

(a) *In general.* In order for a plan to be a qualified group legal services plan for purposes of the exclusion from gross income provided by section 120(a), the plan must give notice to the Internal Revenue Service that it is applying for recognition of its status as a qualified plan. Paragraph (b) of this section describes how the notice is to be filed for the plan. Paragraph (c) of this section describes the action that the Internal Revenue Service will take in response to the notice submitted for the plan. Paragraph (d) of this section describes the period of plan qualification.

(b) *Filing of notice*—(1) *In general.* A notice of application for recognition of the status of a qualified group legal services plan must be filed with the key district director of internal revenue as described in § 601.201(n). The notice must be filed on Form 1024, Application for Recognition of Exemption Under section 501(a) or for Determination Under section 120, with the accompanying Schedule L, and must contain the information required by the form and any accompanying instructions. The form may be filed by either the employer adopting the plan or the person administering the plan. No Form 1024 and Schedule L may be filed for a plan before an employer adopts the plan, or proposes to adopt the plan contingent only upon the recognition of the plan as a qualified plan.

(2) *Plans to which more than one employer contributes.* In general, for purposes of section 120 the adoption of a plan by an employer constitutes the adoption of a separate plan to which that employer alone contributes, notwithstanding that, in form, the employer purports to adopt a plan with respect to which the employer is one of two or more contributing employers. Accordingly, a separate Schedule L must be filed pursuant to the instructions accompanying Form 1024 for each employer adopting a plan.

(3) *Certain collectively bargained plans.* Notwithstanding subparagraph (2) of this paragraph, if a plan to which more than one employer contributes is a plan to which this subparagraph (3) applies, the plan is treated as a single plan for purposes of section 120. Accordingly, only one Form 1024 and Schedule L is required to be filed for the plan, regardless of the number of employers originally adopting the plan. In addition, once a Form 1024 and Schedule L is filed, no additional filing is required with respect to an employer who thereafter adopts the plan. In general, this subparagraph (3) applies to any plan that is maintained pursuant to a collective bargaining agreement between employee representatives and more than one employer who is required by the plan instrument or other agreement to contribute to the plan with respect to employees (or their spouses or dependents) participating in the plan. This subparagraph does not apply, however, if all employers required to contribute to the plan are corporations which are members of a controlled group of corporations within the meaning of section 1563(a), determined without regard to section 1563(e)(3)(C). If all employers required to contribute to the plan are corporations which are members of such a controlled group, the filing requirements described in subparagraph (2) of this paragraph apply, notwithstanding that the plan is maintained pursuant to a collective bargaining agreement.

(c) *Internal Revenue Service action on notice of application for recognition.* The Internal Revenue Service will issue to the person submitting Form 1024 and Schedule L a ruling or determination letter stating that the plan is or is not a qualified group legal services plan. For general procedural rules, see § 601.201 (a) through (n), as that section relates to rulings and determination letters.

(d) *Period of plan qualification*—(1) *In general.* In the case of a favorable determination, the plan will be considered a qualified group legal services plan. If a Form 1024 and Schedule L required to be filed by or on behalf of an employer is filed before—

(i) The end of the first plan year (as determined under the plan),

(ii) The end of the plan year within which the employer adopts the plan, or

(iii) July 29, 1980,

the period of plan qualification with respect to the employer will begin on the date the plan is adopted by the employer (or, if later, January 1, 1977). If the form and schedule are not filed before the latest of the dates described in subdivisions (i), (ii) and (iii), the period of plan qualification with respect to the employer will begin on the date of filing. In any case in which either the Form 1024 or Schedule L filed by or on behalf of an employer is incomplete, the date of filing is the date on which the incomplete form or schedule is filed, if the necessary additional information is provided at the request of the Commissioner within the additional time period allowed by the Commissioner. If the additional information is not provided within the additional time period, allowed, the date of filing is the date on which the additional information is filed. If no separate Form 1024 and Schedule L are required to be filed by or on behalf of an employer (see paragraph (b)(3) of this section), the period of plan qualification with respect to the employer will begin on the date the plan is adopted by the employer (or, if later, January 1, 1977). In any case in which a plan is materially modified to conform to the requirements of section 120, either before or after a Form 1024 and Schedule L are filed, the period of plan qualification will not include any period before the effective date of the modification.

(2) *Plans in existence on June 4, 1976*. (i) Notwithstanding paragraph (d)(1) of this section, a written group legal services plan providing for employer contributions which was in existence on June 4, 1976, will be considered a qualified group legal services plan for the period January 1, 1977, through April 2, 1977. However, if the plan is maintained pursuant to one or more agreements which were in effect on October 4, 1976, and which the Secretary of Labor finds to be collective bargaining agreements, the period of deemed qualification will extend beyond April 2, 1977, and end on the date on which the last of the collective bargaining agreements relating to the plan terminates. Extensions of a bargaining agreement which are agreed to after October 4, 1976, are to be disregarded. The period of deemed qualification for a plan maintained pursuant to a collective bargaining agreement will not, however, extend beyond December 31, 1981.

(ii) A written group legal services plan will be considered to have been in existence on June 4, 1976, if on or before that date the plan was reduced to writing and adopted by one or more employers. No amounts need have been contributed under the plan as of June 4, 1976.

(iii) Notwithstanding that a plan is a qualified plan for the period of deemed qualification described in this paragraph (d)(2), the rules of paragraphs (c) and (d)(1) of this section still apply with respect to a Form 1024 and Schedule L filed for the plan. For example, if a Form 1024 and Schedule L filed by or on behalf of an employer are filed before the latest of the 3 dates described in paragraph (d)(1) of this section, in the case of a favorable determination the plan will be a qualified plan from the date the plan is adopted by the employer (or, if later, January 1, 1977), and any period of deemed qualification and the period of qualification based upon the favorable determination will overlap. However, in the case of a plan to which this paragraph (d)(2) applies, if a Form 1024 and Schedule L required to be filed by or on behalf of an employer is not filed before the latest of the 3 dates described in paragraph (d)(1) of this section, the following rules shall apply. In general, if Form 1024 and Schedule L are filed before the end of the plan year following the plan year with or within which the plan's period of deemed qualification expires, in the event of a favorable determination the plan will be a qualified plan with respect to the employer beginning on the earlier of the day following the date on which the period of deemed qualification expires or the date on which the Form 1024 and Schedule L are filed. The period of plan qualification with respect to an employer cannot, however, include any period before the employer adopts the plan. If the Form 1024 and Schedule L are not filed before the end of the plan year following the plan year with or within which the plan's period of deemed qualification expires, in the case of a favorable determination the plan will be a qualified plan with respect to an employer from the later of the date of filing or adoption of the plan by the employer. The rules described in paragraph (d)(1) of this section relating to incomplete filings and plan modifications apply with respect to a filing described in this paragraph (d)(2).

(e) *Effective date*. This section is effective for notices of application for recognition of the status of a qualified group legal services plan filed after May 29, 1980.

(Secs. 120(c)(4) and 7805 of the Internal Revenue Code of 1954, 90 Stat. 1926, 68A Stat. 917; (26 U.S.C. 120(c)(4), 7805))

[T.D. 7696, 45 FR 28320, Apr. 29, 1980]

**§ 1.121–1 Exclusion of gain from sale or exchange of a principal residence.**

(a) *In general.* Section 121 provides that, under certain circumstances, gross income does not include gain realized on the sale or exchange of property that was owned and used by a taxpayer as the taxpayer's principal residence. Subject to the other provisions of section 121, a taxpayer may exclude gain only if, during the 5-year period ending on the date of the sale or exchange, the taxpayer owned and used the property as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) *Residence*—(1) *In general.* Whether property is used by the taxpayer as the taxpayer's residence depends upon all the facts and circumstances. A property used by the taxpayer as the taxpayer's residence may include a houseboat, a house trailer, or the house or apartment that the taxpayer is entitled to occupy as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b)(1) and (2)). Property used by the taxpayer as the taxpayer's residence does not include personal property that is not a fixture under local law.

(2) *Principal residence.* In the case of a taxpayer using more than one property as a residence, whether property is used by the taxpayer as the taxpayer's principal residence depends upon all the facts and circumstances. If a taxpayer alternates between 2 properties, using each as a residence for successive periods of time, the property that the taxpayer uses a majority of the time during the year ordinarily will be considered the taxpayer's principal residence. In addition to the taxpayer's use of the property, relevant factors in determining a taxpayer's principal residence, include, but are not limited to—

(i) The taxpayer's place of employment;

(ii) The principal place of abode of the taxpayer's family members;

(iii) The address listed on the taxpayer's federal and state tax returns, driver's license, automobile registration, and voter registration card;

(iv) The taxpayer's mailing address for bills and correspondence;

(v) The location of the taxpayer's banks; and

(vi) The location of religious organizations and recreational clubs with which the taxpayer is affiliated.

(3) *Vacant land*—(i) *In general.* The sale or exchange of vacant land is not a sale or exchange of the taxpayer's principal residence unless—

(A) The vacant land is adjacent to land containing the dwelling unit of the taxpayer's principal residence;

(B) The taxpayer owned and used the vacant land as part of the taxpayer's principal residence;

(C) The taxpayer sells or exchanges the dwelling unit in a sale or exchange that meets the requirements of section 121 within 2 years before or 2 years after the date of the sale or exchange of the vacant land; and

(D) The requirements of section 121 have otherwise been met with respect to the vacant land.

(ii) *Limitations*—(A) *Maximum limitation amount.* For purposes of section 121(b)(1) and (2) (relating to the maximum limitation amount of the section 121 exclusion), the sale or exchange of the dwelling unit and the vacant land are treated as one sale or exchange. Therefore, only one maximum limitation amount of $250,000 ($500,000 for certain joint returns) applies to the combined sales or exchanges of vacant land and the dwelling unit. In applying the maximum limitation amount to sales or exchanges that occur in different taxable years, gain from the sale or exchange of the dwelling unit, up to the maximum limitation amount under section 121(b)(1) or (2), is excluded first and each spouse is treated as excluding one-half of the gain from a sale or exchange to which section 121(b)(2)(A) and § 1.121–2(a)(3)(i) (relating to the limitation for certain joint returns) apply.

(B) *Sale or exchange of more than one principal residence in 2-year period.* If a dwelling unit and vacant land are sold or exchanged in separate transactions that qualify for the section 121 exclusion under this paragraph (b)(3), each of the transactions is disregarded in applying section 121(b)(3) (restricting the application of section 121 to only 1 sale or exchange every 2 years) to the other transactions but is taken into account as a sale or exchange of a principal residence on the date of the transaction in applying section 121(b)(3) to that transaction and the sale or exchange of any other principal residence.

(C) *Sale or exchange of vacant land before dwelling unit.* If the sale or exchange of the dwelling unit occurs in a later taxable year than the sale or exchange of the vacant land and after the date prescribed by law (including extensions) for the filing of the return for the taxable year of the sale or exchange of the vacant land, any gain from the sale or exchange of the vacant land must be treated as taxable on the taxpayer's return for the taxable year of the sale or exchange of the vacant land. If the taxpayer has reported gain from the sale or exchange of the vacant land as taxable, after satisfying the requirements of this paragraph (b)(3) the taxpayer may claim the section 121 exclusion with regard to the sale or exchange of the vacant land (for any period for which the period of limitation under section 6511 has not expired) by filing an amended return.

(4) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

*Example 1.* Taxpayer A owns 2 residences, one in New York and one in Florida. From 1999 through 2004, he lives in the New York residence for 7 months and the Florida residence for 5 months of each year. In the absence of facts and circumstances indicating otherwise, the New York residence is A's principal residence. A would be eligible for the section 121 exclusion of gain from the sale or exchange of the New York residence, but not the Florida residence.

*Example 2.* Taxpayer B owns 2 residences, one in Virginia and one in Maine. During 1999 and 2000, she lives in the Virginia residence. During 2001 and 2002, she lives in the Maine residence. During 2003, she lives in the Virginia residence. B's principal residence during 1999, 2000, and 2003 is the Virginia residence. B's principal residence during 2001 and 2002 is the Maine residence. B would be eligible for the 121 exclusion of gain from the sale or exchange of either residence (but not both) during 2003.

*Example 3.* In 1991 Taxpayer C buys property consisting of a house and 10 acres that she uses as her principal residence. In May 2005 C sells 8 acres of the land and realizes a gain of $110,000. C does not sell the dwelling unit before the due date for filing C's 2005 return, therefore C is not eligible to exclude the $110,000 of gain. In March 2007 C sells the house and remaining 2 acres realizing a gain of $180,000 from the sale of the house. C may exclude the $180,000 of gain. Because the sale of the 8 acres occurred within 2 years from the date of the sale of the dwelling unit, the sale of the 8 acres is treated as a sale of the taxpayer's principal residence under paragraph (b)(3) of this section. C may file an amended return for 2005 to claim an exclusion for $70,000 ($250,000–$180,000 gain previously excluded) of the $110,000 gain from the sale of the 8 acres.

*Example 4.* In 1998 Taxpayer D buys a house and 1 acre that he uses as his principal residence. In 1999 D buys 29 acres adjacent to his house and uses the vacant land as part of his principal residence. In 2003 D sells the house and 1 acre and the 29 acres in 2 separate transactions. D sells the house and 1 acre at a loss of $25,000. D realizes $270,000 of gain from the sale of the 29 acres. D may exclude the $245,000 gain from the 2 sales.

(c) *Ownership and use requirements*—(1) *In general.* The requirements of ownership and use for periods aggregating 2 years or more may be satisfied by establishing ownership and use for 24 full months or for 730 days (365 × 2). The requirements of ownership and use may be satisfied during nonconcurrent periods if both the ownership and use tests are met during the 5-year period ending on the date of the sale or exchange.

(2) *Use.* (i) In establishing whether a taxpayer has satisfied the 2-year use requirement, occupancy of the residence is required. However, short temporary absences, such as for vacation or other seasonal absence (although accompanied with rental of the residence), are counted as periods of use.

(ii) *Determination of use during periods of out-of-residence care.* If a taxpayer has become physically or mentally incapable of self-care and the taxpayer sells or exchanges property that the taxpayer owned and used as the taxpayer's principal residence for periods aggregating at least 1 year during the 5-year period preceding the sale or exchange, the taxpayer is treated as using the property as the taxpayer's principal residence for any period of time during the 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

(3) *Ownership*—(i) *Trusts.* If a residence is owned by a trust, for the period that a taxpayer is treated under sections 671 through 679 (relating to the treatment of grantors and others as substantial owners) as the owner of the trust or the portion of the trust that includes the residence, the taxpayer will be treated as owning the residence for purposes of satisfying the 2-year ownership requirement of section 121, and the sale or exchange by the trust will be treated as if made by the taxpayer.

(ii) *Certain single owner entities.* If a residence is owned by an eligible entity (within the meaning of §301.7701–3(a) of this chapter) that has a single owner and is disregarded for federal tax purposes as an entity separate from its owner under §301.7701–3 of this chapter, the owner will be treated as owning the residence for purposes of satisfying the 2-year ownership requirement of section 121, and the sale or exchange by the entity will be treated as if made by the owner.

(4) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples. The examples assume that §1.121–3 (relating to the reduced maximum exclusion) does not apply to the sale of the property. The examples are as follows:

*Example 1.* Taxpayer A has owned and used his house as his principal residence since 1986. On January 31, 1998, A moves to another state. A rents his house to tenants from that date until April 18, 2000, when he sells it. A is eligible for the section 121 exclusion because he has owned and used the house as his principal residence for at least 2 of the 5 years preceding the sale.

*Example 2.* Taxpayer B owns and uses a house as her principal residence from 1986 to the end of 1997. On January 4, 1998, B moves to another state and ceases to use the house. B's son moves into the house in March 1999 and uses the residence until it is sold on July 1, 2001. B may not exclude gain from the sale under section 121 because she did not use the property as her principal residence for at least 2 years out of the 5 years preceding the sale.

*Example 3.* Taxpayer C lives in a townhouse that he rents from 1993 through 1996. On January 18, 1997, he purchases the townhouse. On February 1, 1998, C moves into his daughter's home. On May 25, 2000, while still living in his daughter's home, C sells his townhouse. The section 121 exclusion will apply to gain from the sale because C owned the townhouse for at least 2 years out of the 5 years preceding the sale (from January 19, 1997 until May 25, 2000) and he used the townhouse as his principal residence for at least 2 years during the 5-year period preceding the sale (from May 25, 1995 until February 1, 1998).

*Example 4.* Taxpayer D, a college professor, purchases and moves into a house on May 1, 1997. He uses the house as his principal residence continuously until September 1, 1998, when he goes abroad for a 1-year sabbatical leave. On October 1, 1999, 1 month after returning from the leave, D sells the house. Because his leave is not considered to be a short temporary absence under paragraph (c)(2) of this section, the period of the sabbatical leave may not be included in determining whether D used the house for periods aggregating 2 years during the 5-year period ending on the date of the sale. Consequently, D is not entitled to exclude gain under section 121 because he did not use the residence for the requisite period.

*Example 5.* Taxpayer E purchases a house on February 1, 1998, that he uses as his principal residence. During 1998 and 1999, E leaves his residence for a 2-month summer vacation. E sells the house on March 1, 2000. Although, in the 5-year period preceding the date of sale, the total time E used his residence is less than 2 years (21 months), the section 121 exclusion will apply to gain from the sale of the residence because, under paragraph (c)(2) of this section, the 2-month vacations are short temporary absences and are counted as periods of use in determining whether E used the residence for the requisite period.

(d) *Depreciation taken after May 6, 1997*—(1) *In general.* The section 121 exclusion does not apply to so much of the gain from the sale or exchange of property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to the property for periods after May 6, 1997. Depreciation adjustments allocable to any portion of the property to which the section 121 exclusion does not apply under paragraph (e) of this section are not taken into account for this purpose.

(2) *Example.* The provisions of this paragraph (d) are illustrated by the following example:

*Example.* On July 1, 1999, Taxpayer A moves into a house that he owns and had rented to tenants since July 1, 1997. A took depreciation deductions totaling $14,000 for the period that he rented the property. After using the residence as his principal residence for 2 full years, A sells the property on August 1,

2001. A's gain realized from the sale is $40,000. A has no other section 1231 or capital gains or losses for 2001. Only $26,000 ($40,000 gain realized—$14,000 depreciation deductions) may be excluded under section 121. Under section 121(d)(6) and paragraph (d)(1) of this section, A must recognize $14,000 of the gain as unrecaptured section 1250 gain within the meaning of section 1(h).

(e) *Property used in part as a principal residence*—(1) *Allocation required.* Section 121 will not apply to the gain allocable to any portion (separate from the dwelling unit) of property sold or exchanged with respect to which a taxpayer does not satisfy the use requirement. Thus, if a portion of the property was used for residential purposes and a portion of the property (separate from the dwelling unit) was used for non-residential purposes, only the gain allocable to the residential portion is excludable under section 121. No allocation is required if both the residential and non-residential portions of the property are within the same dwelling unit. However, section 121 does not apply to the gain allocable to the residential portion of the property to the extent provided by paragraph (d) of this section.

(2) *Dwelling unit.* For purposes of this paragraph (e), the term *dwelling unit* has the same meaning as in section 280A(f)(1), but does not include appurtenant structures or other property.

(3) *Method of allocation.* For purposes of determining the amount of gain allocable to the residential and non-residential portions of the property, the taxpayer must allocate the basis and the amount realized between the residential and the non-residential portions of the property using the same method of allocation that the taxpayer used to determine depreciation adjustments (as defined in section 1250(b)(3)), if applicable.

(4) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

*Example 1 Non-residential use of property not within the dwelling unit.* (i) Taxpayer A owns a property that consists of a house, a stable and 35 acres. A uses the stable and 28 acres for non-residential purposes for more than 3 years during the 5-year period preceding the sale. A uses the entire house and the remaining 7 acres as his principal residence for at least 2 years during the 5-year period preceding the sale. For periods after May 6, 1997, A claims depreciation deductions of $9,000 for the non-residential use of the stable. A sells the entire property in 2004, realizing a gain of $24,000. A has no other section 1231 or capital gains or losses for 2004.

(ii) Because the stable and the 28 acres used in the business are separate from the dwelling unit, the allocation rules under this paragraph (e) apply and A must allocate the basis and amount realized between the portion of the property that he used as his principal residence and the portion of the property that he used for non-residential purposes. A determines that $14,000 of the gain is allocable to the non-residential-use portion of the property and that $10,000 of the gain is allocable to the portion of the property used as his residence. A must recognize the $14,000 of gain allocable to the non-residential-use portion of the property ($9,000 of which is unrecaptured section 1250 gain within the meaning of section 1(h), and $5,000 of which is adjusted net capital gain). A may exclude $10,000 of the gain from the sale of the property.

*Example 2 Non-residential use of property not within the dwelling unit and rental of the entire property.* (i) In 1998 Taxpayer B buys a property that includes a house, a barn, and 2 acres. B uses the house and 2 acres as her principal residence and the barn for an antiques business. In 2002, B moves out of the house and rents it to tenants. B sells the property in 2004, realizing a gain of $21,000. Between 1998 and 2004 B claims depreciation deductions of $4,800 attributable to the antiques business. Between 2002 and 2004 B claims depreciation deductions of $3,000 attributable to the house. B has no other section 1231 or capital gains or losses for 2004.

(ii) Because the portion of the property used in the antiques business is separate from the dwelling unit, the allocation rules under this paragraph (e) apply. B must allocate basis and amount realized between the portion of the property that she used as her principal residence and the portion of the property that she used for non-residential purposes. B determines that $4,000 of the gain is allocable to the non-residential portion of the property and that $17,000 of the gain is allocable to the portion of the property that she used as her principal residence.

(iii) B must recognize the $4,000 of gain allocable to the non-residential portion of the property (all of which is unrecaptured section 1250 gain within the meaning of section 1(h)). In addition, the section 121 exclusion does not apply to the gain allocable to the residential portion of the property to the extent of the depreciation adjustments attributable to the residential portion of the property for periods after May 6, 1997 ($3,000). Therefore, B may exclude $14,000 of the gain from the sale of the property.

*Example 3 Non-residential use of a separate dwelling unit.* (i) In 2002 Taxpayer C buys a 3-story townhouse and converts the basement level, which has a separate entrance, into a separate apartment by installing a kitchen and bathroom and removing the interior stairway that leads from the basement to the upper floors. After the conversion, the property constitutes 2 dwelling units within the meaning of paragraph (e)(2) of this section. C uses the first and second floors of the townhouse as his principal residence and rents the basement level to tenants from 2003 to 2007. C claims depreciation deductions of $2,000 for that period with respect to the basement apartment. C sells the entire property in 2007, realizing gain of $18,000. C has no other section 1231 or capital gains or losses for 2007.

(ii) Because the basement apartment and the upper floors of the townhouse are separate dwelling units, C must allocate the gain between the portion of the property that he used as his principal residence and the portion of the property that he used for non-residential purposes under paragraph (e) of this section. After allocating the basis and the amount realized between the residential and non-residential portions of the property, C determines that $6,000 of the gain is allocable to the non-residential portion of the property and that $12,000 of the gain is allocable to the portion of the property used as his residence. C must recognize the $6,000 of gain allocable to the non-residential portion of the property ($2,000 of which is unrecaptured section 1250 gain within the meaning of section 1(h), and $4,000 of which is adjusted net capital gain). C may exclude $12,000 of the gain from the sale of the property.

*Example 4 Separate dwelling unit converted to residential use.* The facts are the same as in *Example 3* except that in 2007 C incorporates the basement of the townhouse into his principal residence by eliminating the kitchen and building a new interior stairway to the upper floors. C uses all 3 floors of the townhouse as his principal residence for 2 full years and sells the townhouse in 2010, realizing a gain of $20,000. Under section 121(d)(6) and paragraph (d) of this section, C must recognize $2,000 of the gain as unrecaptured section 1250 gain within the meaning of section 1(h). Because C used the entire 3 floors of the townhouse as his principal residence for 2 of the 5 years preceding the sale of the property, C may exclude the remaining $18,000 of the gain from the sale of the house.

*Example 5 Non-residential use within the dwelling unit, property depreciated.* Taxpayer D, an attorney, buys a house in 2003. The house constitutes a single dwelling unit but D uses a portion of the house as a law office. D claims depreciation deductions of $2,000 during the period that she owns the house. D sells the house in 2006, realizing a gain of $13,000. D has no other section 1231 or capital gains or losses for 2006. Under section 121(d)(6) and paragraph (d) of this section, D must recognize $2,000 of the gain as unrecaptured section 1250 gain within the meaning of section 1(h). D may exclude the remaining $11,000 of the gain from the sale of her house because, under paragraph (e)(1) of this section, she is not required to allocate gain to the business use within the dwelling unit.

*Example 6 Non-residential use within the dwelling unit, property not depreciated.* The facts are the same as in Example 5, except that D is not entitled to claim any depreciation deductions with respect to her business use of the house. D may exclude $13,000 of the gain from the sale of her house because, under paragraph (e)(1) of this section, she is not required to allocate gain to the business use within the dwelling unit.

(f) *Effective date.* This section is applicable for sales and exchanges on or after Decmeber 24, 2002. For rules on electing to apply the provisions of this section retroactively, see § 1.121–4(j).

[T.D. 9030, 67 FR 78361, Dec. 24, 2002]

### § 1.121–2 Limitations.

(a) *Dollar limitations*—(1) *In general.* A taxpayer may exclude from gross income up to $250,000 of gain from the sale or exchange of the taxpayer's principal residence. A taxpayer is eligible for only one maximum exclusion per principal residence.

(2) *Joint owners.* If taxpayers jointly own a principal residence but file separate returns, each taxpayer may exclude from gross income up to $250,000 of gain that is attributable to each taxpayer's interest in the property, if the requirements of section 121 have otherwise been met.

(3) *Special rules for joint returns*—(i) *In general.* A husband and wife who make a joint return for the year of the sale or exchange of a principal residence may exclude up to $500,000 of gain if—

(A) Either spouse meets the 2-year ownership requirements of § 1.121–1(a) and (c);

(B) Both spouses meet the 2-year use requirements of § 1.121–1(a) and (c); and

(C) Neither spouse excluded gain from a prior sale or exchange of property under section 121 within the last 2 years (as determined under paragraph (b) of this section).

(ii) *Other joint returns.* For taxpayers filing jointly, if either spouse fails to meet the requirements of paragraph (a)(3)(i) of this section, the maximum limitation amount to be claimed by the couple is the sum of each spouse's limitation amount determined on a separate basis as if they had not been married. For this purpose, each spouse is treated as owning the property during the period that either spouse owned the property.

(4) *Examples.* The provisions of this paragraph (a) are illustrated by the following examples. The examples assume that §1.121–3 (relating to the reduced maximum exclusion) does not apply to the sale of the property. The examples are as follows:

*Example 1.* Unmarried Taxpayers A and B own a house as joint owners, each owning a 50 percent interest in the house. They sell the house after owning and using it as their principal residence for 2 full years. The gain realized from the sale is $256,000. A and B are each eligible to exclude $128,000 of gain because the amount of realized gain allocable to each of them from the sale does not exceed each taxpayer's available limitation amount of $250,000.

*Example 2.* The facts are the same as in *Example 1,* except that A and B are married taxpayers who file a joint return for the taxable year of the sale. A and B are eligible to exclude the entire amount of realized gain ($256,000) from gross income because the gain realized from the sale does not exceed the limitation amount of $500,000 available to A and B as taxpayers filing a joint return.

*Example 3.* During 1999, married Taxpayers H and W each sell a residence that each had separately owned and used as a principal residence before their marriage. Each spouse meets the ownership and use tests for his or her respective residence. Neither spouse meets the use requirement for the other spouse's residence. H and W file a joint return for the year of the sales. The gain realized from the sale of H's residence is $200,000. The gain realized from the sale of W's residence is $300,000. Because the ownership and use requirements are met for each residence by each respective spouse, H and W are each eligible to exclude up to $250,000 of gain from the sale of their individual residences. However, W may not use H's unused exclusion to exclude gain in excess of her limitation amount. Therefore, H and W must recognize $50,000 of the gain realized on the sale of W's residence.

*Example 4.* Married Taxpayers H and W sell their residence and file a joint return for the year of the sale. W, but not H, satisfies the requirements of section 121. They are eligible to exclude up to $250,000 of the gain from the sale of the residence because that is the sum of each spouse's dollar limitation amount determined on a separate basis as if they had not been married ($0 for H, $250,000 for W).

*Example 5.* Married Taxpayers H and W have owned and used their principal residence since 1998. On February 16, 2001, H dies. On September 24, 2001, W sells the residence and realizes a gain of $350,000. Pursuant to section 6013(a)(3), W and H's executor make a joint return for 2001. All $350,000 of the gain from the sale of the residence may be excluded.

*Example 6.* Assume the same facts as *Example 5,* except that W does not sell the residence until January 31, 2002. Because W's filing status for the taxable year of the sale is single, the special rules for joint returns under paragraph (a)(3) of this section do not apply and W may exclude only $250,000 of the gain.

(b) *Application of section 121 to only 1 sale or exchange every 2 years*—(1) *In general.* Except as otherwise provided in §1.121–3 (relating to the reduced maximum exclusion), a taxpayer may not exclude from gross income gain from the sale or exchange of a principal residence if, during the 2-year period ending on the date of the sale or exchange, the taxpayer sold or exchanged other property for which gain was excluded under section 121. For purposes of this paragraph (b)(1), any sale or exchange before May 7, 1997, is disregarded.

(2) *Example.* The following example illustrates the rules of this paragraph (b). The example assumes that §1.121–3 (relating to the reduced maximum exclusion) does not apply to the sale of the property. The example is as follows:

*Example.* Taxpayer A owns a townhouse that he uses as his principal residence for 2 full years, 1998 and 1999. A buys a house in 2000 that he owns and uses as his principal residence. A sells the townhouse in 2002 and excludes gain realized on its sale under section 121. A sells the house in 2003. Although A meets the 2-year ownership and use requirements of section 121, A is not eligible to exclude gain from the sale of the house because A excluded gain within the last 2 years under section 121 from the sale of the townhouse.

(c) *Effective date.* This section is applicable for sales and exchanges on or after December 24, 2002. For rules on electing to apply the provisions of this section retroactively, see §1.121–4(j).

[T.D. 9030, 67 FR 78361, Dec. 24, 2002]

**§ 1.121–3 Reduced maximum exclusion for taxpayers failing to meet certain requirements.**

(a) *In general.* In lieu of the limitation under section 121(b) and § 1.121–2, a reduced maximum exclusion limitation may be available for a taxpayer who sells or exchanges property used as the taxpayer's principal residence but fails to satisfy the ownership and use requirements described in § 1.121–1(a) and (c) or the 2-year limitation described in § 1.121–2(b).

(b) *Primary reason for sale or exchange.* In order for a taxpayer to claim a reduced maximum exclusion under section 121(c), the sale or exchange must be by reason of a change in place of employment, health, or unforeseen circumstances. If a safe harbor described in this section applies, a sale or exchange is deemed to be by reason of a change in place of employment, health, or unforeseen circumstances. If a safe harbor described in this section does not apply, a sale or exchange is by reason of a change in place of employment, health, or unforeseen circumstances only if the primary reason for the sale or exchange is a change in place of employment (within the meaning of paragraph (c) of this section), health (within the meaning of paragraph (d) of this section), or unforeseen circumstances (within the meaning of paragraph (e) of this section). Whether the requirements of this section are satisfied depends upon all the facts and circumstances. Factors that may be relevant in determining the taxpayer's primary reason for the sale or exchange include (but are not limited to) the extent to which—

(1) The sale or exchange and the circumstances giving rise to the sale or exchange are proximate in time;

(2) The suitability of the property as the taxpayer's principal residence materially changes;

(3) The taxpayer's financial ability to maintain the property is materially impaired;

(4) The taxpayer uses the property as the taxpayer's residence during the period of the taxpayer's ownership of the property;

(5) The circumstances giving rise to the sale or exchange are not reasonably foreseeable when the taxpayer begins using the property as the taxpayer's principal residence; and

(6) The circumstances giving rise to the sale or exchange occur during the period of the taxpayer's ownership and use of the property as the taxpayer's principal residence.

(c) *Sale or exchange by reason of a change in place of employment*—(1) *In general.* A sale or exchange is by reason of a change in place of employment if, in the case of a qualified individual described in paragraph (f) of this section, the primary reason for the sale or exchange is a change in the location of the individual's employment.

(2) *Distance safe harbor.* A sale or exchange is deemed to be by reason of a change in place of employment (within the meaning of paragraph (c)(1) of this section) if—

(i) The change in place of employment occurs during the period of the taxpayer's ownership and use of the property as the taxpayer's principal residence; and

(ii) The qualified individual's new place of employment is at least 50 miles farther from the residence sold or exchanged than was the former place of employment, or, if there was no former place of employment, the distance between the qualified individual's new place of employment and the residence sold or exchanged is at least 50 miles.

(3) *Employment.* For purposes of this paragraph (c), *employment* includes the commencement of employment with a new employer, the continuation of employment with the same employer, and the commencement or continuation of self-employment.

(4) *Examples.* The following examples illustrate the rules of this paragraph (c):

*Example 1.* A is unemployed and owns a townhouse that she has owned and used as her principal residence since 2003. In 2004 A obtains a job that is 54 miles from her townhouse, and she sells the townhouse. Because the distance between A's new place of employment and the townhouse is at least 50 miles, the sale is within the safe harbor of paragraph (c)(2) of this section and A is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 2.* B is an officer in the United States Air Force stationed in Florida. B purchases a house in Florida in 2002. In May 2003

B moves out of his house to take a 3-year assignment in Germany. B sells his house in January 2004. Because B's new place of employment in Germany is at least 50 miles farther from the residence sold than is B's former place of employment in Florida, the sale is within the safe harbor of paragraph (c)(2) of this section and B is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 3.* C is employed by Employer R at R's Philadelphia office. C purchases a house in February 2002 that is 35 miles from R's Philadelphia office. In May 2003 C begins a temporary assignment at R's Wilmington office that is 72 miles from C's house, and moves out of the house. In June 2005 C is assigned to work in R's London office. C sells her house in August 2005 as a result of the assignment to London. The sale of the house is not within the safe harbor of paragraph (c)(2) of this section by reason of the change in place of employment from Philadelphia to Wilmington because the Wilmington office is not 50 miles farther from C's house than is the Philadelphia office. Furthermore, the sale is not within the safe harbor by reason of the change in place of employment to London because C is not using the house as her principal residence when she moves to London. However, C is entitled to claim a reduced maximum exclusion under section 121(c)(2) because, under the facts and circumstances, the primary reason for the sale is the change in C's place of employment.

*Example 4.* In July 2003 D, who works as an emergency medicine physician, buys a condominium that is 5 miles from her place of employment and uses it as her principal residence. In February 2004, D obtains a job that is located 51 miles from D's condominium. D may be called in to work unscheduled hours and, when called, must be able to arrive at work quickly. Because of the demands of the new job, D sells her condominium and buys a townhouse that is 4 miles from her new place of employment. Because D's new place of employment is only 46 miles farther from the condominium than is D's former place of employment, the sale is not within the safe harbor of paragraph (c)(2) of this section. However, D is entitled to claim a reduced maximum exclusion under section 121(c)(2) because, under the facts and circumstances, the primary reason for the sale is the change in D's place of employment.

(d) *Sale or exchange by reason of health*—(1) *In general.* A sale or exchange is by reason of health if the primary reason for the sale or exchange is to obtain, provide, or facilitate the diagnosis, cure, mitigation, or treatment of disease, illness, or injury of a qualified individual described in paragraph (f) of this section, or to obtain or provide medical or personal care for a qualified individual suffering from a disease, illness, or injury. A sale or exchange that is merely beneficial to the general health or well-being of an individual is not a sale or exchange by reason of health.

(2) *Physician's recommendation safe harbor*. A sale or exchange is deemed to be by reason of health if a physician (as defined in section 213(d)(4)) recommends a change of residence for reasons of health (as defined in paragraph (d)(1) of this section).

(3) *Examples.* The following examples illustrate the rules of this paragraph (d):

*Example 1.* In 2003 A buys a house that she uses as her principal residence. A is injured in an accident and is unable to care for herself. A sells her house in 2004 and moves in with her daughter so that the daughter can provide the care that A requires as a result of her injury. Because, under the facts and circumstances, the primary reason for the sale of A's house is A's health, A is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 2.* H's father has a chronic disease. In 2003 H and W purchase a house that they use as their principal residence. In 2004 H and W sell their house in order to move into the house of H's father so that they can provide the care he requires as a result of his disease. Because, under the facts and circumstances, the primary reason for the sale of their house is the health of H's father, H and W are entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 3.* H and W purchase a house in 2003 that they use as their principal residence. Their son suffers from a chronic illness that requires regular medical care. Later that year their son begins a new treatment that is available at a hospital 100 miles away from their residence. In 2004 H and W sell their house so that they can be closer to the hospital to facilitate their son's treatment. Because, under the facts and circumstances, the primary reason for the sale is to facilitate the treatment of their son's chronic illness, H and W are entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 4.* B, who has chronic asthma, purchases a house in Minnesota in 2003 that he uses as his principal residence. B's doctor tells B that moving to a warm, dry climate would mitigate B's asthma symptoms. In 2004 B sells his house and moves to Arizona to relieve his asthma symptoms. The sale is within the safe harbor of paragraph (d)(2) of this section and B is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 5.* In 2003 H and W purchase a house in Michigan that they use as their principal residence. H's doctor tells H that he should get more outdoor exercise, but H is not suffering from any disease that can be treated or mitigated by outdoor exercise. In 2004 H and W sell their house and move to Florida so that H can increase his general level of exercise by playing golf year-round. Because the sale of the house is merely beneficial to H's general health, the sale of the house is not by reason of H's health. H and W are not entitled to claim a reduced maximum exclusion under section 121(c)(2).

(e) *Sale or exchange by reason of unforeseen circumstances*—(1) *In general.* A sale or exchange is by reason of unforeseen circumstances if the primary reason for the sale or exchange is the occurrence of an event that the taxpayer could not reasonably have anticipated before purchasing and occupying the residence. A sale or exchange by reason of unforeseen circumstances (other than a sale or exchange deemed to be by reason of unforeseen circumstances under paragraph (e)(2) or (3) of this section) does not qualify for the reduced maximum exclusion if the primary reason for the sale or exchange is a preference for a different residence or an improvement in financial circumstances.

(2) *Specific event safe harbors.* A sale or exchange is deemed to be by reason of unforeseen circumstances (within the meaning of paragraph (e)(1) of this section) if any of the events specified in paragraphs (e)(2)(i) through (iii) of this section occur during the period of the taxpayer's ownership and use of the residence as the taxpayer's principal residence:

(i) The involuntary conversion of the residence.

(ii) Natural or man-made disasters or acts of war or terrorism resulting in a casualty to the residence (without regard to deductibility under section 165(h)).

(iii) In the case of a qualified individual described in paragraph (f) of this section—

(A) Death;

(B) The cessation of employment as a result of which the qualified individual is eligible for unemployment compensation (as defined in section 85(b));

(C) A change in employment or self-employment status that results in the taxpayer's inability to pay housing costs and reasonable basic living expenses for the taxpayer's household (including amounts for food, clothing, medical expenses, taxes, transportation, court-ordered payments, and expenses reasonably necessary to the production of income, but not for the maintenance of an affluent or luxurious standard of living);

(D) Divorce or legal separation under a decree of divorce or separate maintenance; or

(E) Multiple births resulting from the same pregnancy.

(3) *Designation of additional events as unforeseen circumstances.* The Commissioner may designate other events or situations as unforeseen circumstances in published guidance of general applicability and may issue rulings addressed to specific taxpayers identifying other events or situations as unforeseen circumstances with regard to those taxpayers (see § 601.601(d)(2) of this chapter).

(4) *Examples.* The following examples illustrate the rules of this paragraph (e):

*Example 1.* In 2003 A buys a house in California. After A begins to use the house as her principal residence, an earthquake causes damage to A's house. A sells the house in 2004. The sale is within the safe harbor of paragraph (e)(2)(ii) of this section and A is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 2.* H works as a teacher and W works as a pilot. In 2003 H and W buy a house that they use as their principal residence. Later that year W is furloughed from her job for six months. H and W are unable to pay their mortgage and reasonable basic living expenses for their household during the period W is furloughed. H and W sell their house in 2004. The sale is within the safe harbor of paragraph (e)(2)(iii)(C) of this section and H and W are entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 3.* In 2003 H and W buy a two-bedroom condominium that they use as their principal residence. In 2004 W gives birth to twins and H and W sell their condominium and buy a four-bedroom house. The sale is within the safe harbor of paragraph (e)(2)(iii)(E) of this section, and H and W are entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 4.* In 2003 B buys a condominium in a high-rise building and uses it as his principal residence. B's monthly condominium fee is $X. Three months after B moves into the condominium, the condominium association replaces the building's roof and heating system. Six months later, B's monthly condominium fee doubles in order to pay for the repairs. B sells the condominium in 2004 because he is unable to afford the new condominium fee along with a monthly mortgage payment. The safe harbors of paragraph (e)(2) of this section do not apply. However, under the facts and circumstances, the primary reason for the sale, the doubling of the condominium fee, is an unforeseen circumstance because B could not reasonably have anticipated that the condominium fee would double at the time he purchased and occupied the property. Consequently, the sale of the condominium is by reason of unforeseen circumstances and B is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 5.* In 2003 C buys a house that he uses as his principal residence. The property is located on a heavily traveled road. C sells the property in 2004 because C is disturbed by the traffic. The safe harbors of paragraph (e)(2) of this section do not apply. Under the facts and circumstances, the primary reason for the sale, the traffic, is not an unforeseen circumstance because C could reasonably have anticipated the traffic at the time he purchased and occupied the house. Consequently, the sale of the house is not by reason of unforeseen circumstances and C is not entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 6.* In 2003 D and her fiance E buy a house and live in it as their principal residence. In 2004 D and E cancel their wedding plans and E moves out of the house. Because D cannot afford to make the monthly mortgage payments alone, D and E sell the house in 2004. The safe harbors of paragraph (e)(2) of this section do not apply. However, under the facts and circumstances, the primary reason for the sale, the broken engagement, is an unforeseen circumstance because D and E could not reasonably have anticipated the broken engagement at the time they purchased and occupied the house. Consequently, the sale is by reason of unforeseen circumstances and D and E are each entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 7.* In 2003 F buys a small condominium that she uses as her principal residence. In 2005 F receives a promotion and a large increase in her salary. F sells the condominium in 2004 and purchases a house because she can now afford the house. The safe harbors of paragraph (e)(2) of this section do not apply. Under the facts and circumstances, the primary reason for the sale of the house, F's salary increase, is an improvement in F's financial circumstances. Under paragraph (e)(1) of this section, an improvement in financial circumstances, even if the result of unforeseen circumstances, does not qualify for the reduced maximum exclusion by reason of unforeseen circumstances under section 121(c)(2).

*Example 8.* In April 2003 G buys a house that he uses as his principal residence. G sells his house in October 2004 because the house has greatly appreciated in value, mortgage rates have substantially decreased, and G can afford a bigger house. The safe harbors of paragraph (e)(2) of this section do not apply. Under the facts and circumstances, the primary reasons for the sale of the house, the changes in G's house value and in the mortgage rates, are an improvement in G's financial circumstances. Under paragraph (e)(1) of this section, an improvement in financial circumstances, even if the result of unforeseen circumstances, does not qualify for the reduced maximum exclusion by reason of unforeseen circumstances under section 121(c)(2).

*Example 9.* H works as a police officer for City X. In 2003 H buys a condominium that he uses as his principal residence. In 2004 H is assigned to City X's K–9 unit and is required to care for the police service dog at his home. Because H's condominium association does not permit H to have a dog in his condominium, in 2004 he sells the condominium and buys a house. The safe harbors of paragraph (e)(2) of this section do not apply. However, under the facts and circumstances, the primary reason for the sale, H's assignment to the K–9 unit, is an unforeseen circumstance because H could not reasonably have anticipated his assignment to the K–9 unit at the time he purchased and occupied the condominium. Consequently, the sale of the condominium is by reason of unforeseen circumstances and H is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 10.* In 2003, J buys a small house that she uses as her principal residence. After J wins the lottery, she sells the small house in 2004 and buys a bigger, more expensive house. The safe harbors of paragraph (e)(2) of this section do not apply. Under the facts and circumstances, the primary reason for the sale of the house, winning the lottery, is an improvement in J's financial circumstances. Under paragraph (e)(1) of this section, an improvement in financial circumstances, even if the result of unforeseen circumstances, does not qualify for the reduced maximum exclusion under section 121(c)(2).

(f) *Qualified individual.* For purposes of this section, *qualified individual* means—

(1) The taxpayer;

(2) The taxpayer's spouse;

(3) A co-owner of the residence;

(4) A person whose principal place of abode is in the same household as the taxpayer; or

(5) For purposes of paragraph (d) of this section, a person bearing a relationship specified in sections 152(a)(1) through 152(a)(8) (without regard to qualification as a dependent) to a qualified individual described in paragraphs (f)(1) through (4) of this section, or a descendant of the taxpayer's grandparent.

(g) *Computation of reduced maximum exclusion.* (1) The reduced maximum exclusion is computed by multiplying the maximum dollar limitation of $250,000 ($500,000 for certain joint filers) by a fraction. The numerator of the fraction is the shortest of the period of time that the taxpayer owned the property during the 5-year period ending on the date of the sale or exchange; the period of time that the taxpayer used the property as the taxpayer's principal residence during the 5-year period ending on the date of the sale or exchange; or the period of time between the date of a prior sale or exchange of property for which the taxpayer excluded gain under section 121 and the date of the current sale or exchange. The numerator of the fraction may be expressed in days or months. The denominator of the fraction is 730 days or 24 months (depending on the measure of time used in the numerator).

(2) *Examples.* The following examples illustrate the rules of this paragraph (g):

*Example 1.* Taxpayer A purchases a house that she uses as her principal residence. Twelve months after the purchase, A sells the house due to a change in place of her employment. A has not excluded gain under section 121 on a prior sale or exchange of property within the last 2 years. A is eligible to exclude up to $125,000 of the gain from the sale of her house (12/24 × $250,000).

*Example 2.* (i) Taxpayer H owns a house that he has used as his principal residence since 1996. On January 15, 1999, H and W marry and W begins to use H's house as her principal residence. On January 15, 2000, H sells the house due to a change in W's place of employment. Neither H nor W has excluded gain under section 121 on a prior sale or exchange of property within the last 2 years.

(ii) Because H and W have not each used the house as their principal residence for at least 2 years during the 5-year period preceding its sale, the maximum dollar limitation amount that may be claimed by H and W will not be $500,000, but the sum of each spouse's limitation amount determined on a separate basis as if they had not been married. (*See* § 1.121–2(a)(3)(ii).)

(iii) H is eligible to exclude up to $250,000 of gain because he meets the requirements of section 121. W is not eligible to exclude the maximum dollar limitation amount. Instead, because the sale of the house is due to a change in place of employment, W is eligible to claim a reduced maximum exclusion of up to $125,000 of the gain (365/730 × $250,000). Therefore, H and W are eligible to exclude up to $375,000 of gain ($250,000 + $125,000) from the sale of the house.

(h) *Effective dates.* Paragraphs (a) and (g) of this section are applicable for sales and exchanges on or after December 24, 2002. Paragraphs (b) through (f) of this section are applicable for sales and exchanges on or after August 13, 2004.

[T.D. 9030, 67 FR 78361, Dec. 24, 2002, as amended by T.D. 9152, 69 FR 50304, Aug. 16, 2004]

### § 1.121–4 Special rules.

(a) *Property of deceased spouse*—(1) *In general.* For purposes of satisfying the ownership and use requirements of section 121, a taxpayer is treated as owning and using property as the taxpayer's principal residence during any period that the taxpayer's deceased spouse owned and used the property as a principal residence before death if—

(i) The taxpayer's spouse is deceased on the date of the sale or exchange of the property; and

(ii) The taxpayer has not remarried at the time of the sale or exchange of the property.

(2) *Example.* The provisions of this paragraph (a) are illustrated by the following example. The example assumes that § 1.121–3 (relating to the reduced maximum exclusion) does not apply to the sale of the property. The example is as follows:

*Example.* Taxpayer H has owned and used a house as his principal residence since 1987. H and W marry on July 1, 1999 and from that date they use H's house as their principal residence. H dies on August 15, 2000, and W inherits the property. W sells the property on September 1, 2000, at which time she has not remarried. Although W has owned and used the house for less than 2 years, W will be considered to have satisfied the ownership and use requirements of section 121 because W's period of ownership and use includes the period that H owned and used the property before death.

(b) *Property owned by spouse or former spouse*—(1) *Property transferred to individual from spouse or former spouse.* If a taxpayer obtains property from a spouse or former spouse in a transaction described in section 1041(a), the period that the taxpayer owns the property will include the period that the spouse or former spouse owned the property.

(2) *Property used by spouse or former spouse.* A taxpayer is treated as using property as the taxpayer's principal residence for any period that the taxpayer has an ownership interest in the property and the taxpayer's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)), provided that the spouse or former spouse uses the property as his or her principal residence.

(c) *Tenant-stockholder in cooperative housing corporation.* A taxpayer who holds stock as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b)(1) and (2)) may be eligible to exclude gain under section 121 on the sale or exchange of the stock. In determining whether the taxpayer meets the requirements of section 121, the ownership requirements are applied to the holding of the stock and the use requirements are applied to the house or apartment that the taxpayer is entitled to occupy by reason of the taxpayer's stock ownership.

(d) *Involuntary conversions*—(1) *In general.* For purposes of section 121, the destruction, theft, seizure, requisition, or condemnation of property is treated as a sale of the property.

(2) *Application of section 1033.* In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property used as the taxpayer's principal residence is treated as being the amount determined without regard to section 121, reduced by the amount of gain excluded from the taxpayer's gross income under section 121.

(3) *Property acquired after involuntary conversion.* If the basis of the property acquired as a result of an involuntary conversion is determined (in whole or in part) under section 1033(b) (relating to the basis of property acquired through an involuntary conversion), then for purposes of satisfying the requirements of section 121, the taxpayer will be treated as owning and using the acquired property as the taxpayer's principal residence during any period of time that the taxpayer owned and used the converted property as the taxpayer's principal residence.

(4) *Example.* The provisions of this paragraph (d) are illustrated by the following example:

*Example.* (i) On February 18, 1999, fire destroys Taxpayer A's house which has an adjusted basis of $80,000. A had owned and used this property as her principal residence for 20 years prior to its destruction. A's insurance company pays A $400,000 for the house. A realizes a gain of $320,000 ($400,000—$80,000). On August 27, 1999, A purchases a new house at a cost of $100,000.

(ii) Because the destruction of the house is treated as a sale for purposes of section 121, A will exclude $250,000 of the realized gain from A's gross income. For purposes of section 1033, the amount realized is then treated as being $150,000 ($400,000—$250,000) and the gain realized is $70,000 ($150,000 amount realized—$80,000 basis). A elects under section 1033 to recognize only $50,000 of the gain ($150,000 amount realized—$100,000 cost of new house). The remaining $20,000 of gain is deferred and A's basis in the new house is $80,000 ($100,000 cost—$20,000 gain not recognized).

(iii) A will be treated as owning and using the new house as A's principal residence during the 20-year period that A owned and used the destroyed house.

(e) *Sales or exchanges of partial interests*—(1) *Partial interests other than remainder interests*—(i) *In general.* Except as provided in paragraph (e)(2) of this section (relating to sales or exchanges of remainder interests), a taxpayer may apply the section 121 exclusion to gain from the sale or exchange of an interest in the taxpayer's principal residence that is less than the taxpayer's entire interest if the interest sold or exchanged includes an interest in the dwelling unit. For rules relating to the sale or exchange of vacant land, *see* § 1.121–1(b)(3).

(ii) *Limitations*—(A) *Maximum limitation amount*. For purposes of section 121(b)(1) and (2) (relating to the maximum limitation amount of the section 121 exclusion), sales or exchanges of partial interests in the same principal residence are treated as one sale or exchange. Therefore, only one maximum limitation amount of $250,000 ($500,000 for certain joint returns) applies to the combined sales or exchanges of the partial interests. In applying the maximum limitation amount to sales or exchanges that occur in different taxable years, a taxpayer may exclude gain from the first sale or exchange of a partial interest up to the taxpayer's full maximum limitation amount and may exclude gain from the sale or exchange of any other partial interest in the same principal residence to the extent of any remaining maximum limitation amount, and each spouse is treated as excluding one-half of the gain from a sale or exchange to which section 121(b)(2)(A) and § 1.121–2(a)(3)(i)(relating to the limitation for certain joint returns) apply.

(B) *Sale or exchange of more than one principal residence in 2-year period*. For purposes of applying section 121(b)(3) (restricting the application of section 121 to only 1 sale or exchange every 2 years), each sale or exchange of a partial interest is disregarded with respect to other sales or exchanges of partial interests in the same principal residence, but is taken into account as of the date of the sale or exchange in applying section 121(b)(3) to that sale or exchange and the sale or exchange of any other principal residence.

(2) *Sales or exchanges of remainder interests*—(i) *In general*. A taxpayer may elect to apply the section 121 exclusion to gain from the sale or exchange of a remainder interest in the taxpayer's principal residence.

(ii) *Limitations*—(A) *Sale or exchange of any other interest*. If a taxpayer elects to exclude gain from the sale or exchange of a remainder interest in the taxpayer's principal residence, the section 121 exclusion will not apply to a sale or exchange of any other interest in the residence that is sold or exchanged separately.

(B) *Sales or exchanges to related parties*. This paragraph (e)(2) will not apply to a sale or exchange to any person that bears a relationship to the taxpayer that is described in section 267(b) or 707(b).

(iii) *Election*. The taxpayer makes the election under this paragraph (e)(2) by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the remainder interest in the taxpayer's gross income. A taxpayer may make or revoke the election at any time before the expiration of a 3-year period beginning on the last date prescribed by law (determined without regard to extensions) for the filing of the return for the taxable year in which the sale or exchange occurred.

(3) *Example*. The provisions of this paragraph (e) are illustrated by the following example:

*Example*. In 1991 Taxpayer A buys a house that A uses as his principal residence. In 2004 A's friend B moves into A's house and A sells B a 50% interest in the house realizing a gain of $136,000. A may exclude the $136,000 of gain. In 2005 A sells his remaining 50% interest in the home to B realizing a gain of $138,000. A may exclude $114,000 ($250,000—$136,000 gain previously excluded) of the $138,000 gain from the sale of the remaining interest.

(f) *No exclusion for expatriates*. The section 121 exclusion will not apply to any sale or exchange by an individual if the provisions of section 877(a) (relating to the treatment of expatriates) applies to the individual.

(g) *Election to have section not apply*. A taxpayer may elect to have the section 121 exclusion not apply to a sale or exchange of property. The taxpayer makes the election by filing a return for the taxable year of the sale or exchange that includes the gain from the sale or exchange of the taxpayer's principal residence in the taxpayer's gross income. A taxpayer may make an election under this paragraph (g) to have section 121 not apply (or revoke an election to have section 121 not apply) at any time before the expiration of a 3-year period beginning on the last date prescribed by law (determined without regard to extensions) for the filing of the return for the taxable year in which the sale or exchange occurred.

(h) *Residences acquired in rollovers under section 1034.* If a taxpayer acquires property in a transaction that qualifies under section 1034 (section 1034 property) for the nonrecognition of gain realized on the sale or exchange of another property and later sells or exchanges such property, in determining the period of the taxpayer's ownership and use of the property under section 121 the taxpayer may include the periods that the taxpayer owned and used the section 1034 property as the taxpayer's principal residence (and each prior residence taken into account under section 1223(7) in determining the holding period of the section 1034 property).

(i) [Reserved]

(j) *Election to apply regulations retroactively.* Taxpayers who would otherwise qualify under §§ 1.121–1 through 1.121–4 to exclude gain from a sale or exchange of a principal residence before December 24, 2002 but on or after May 7, 1997, may elect to apply §§ 1.121–1 through 1.121–4 for any years for which the period of limitation under section 6511 has not expired. The taxpayer makes the election under this paragraph (j) by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the taxpayer's principal residence in the taxpayer's gross income. Taxpayers who have filed a return for the taxable year of the sale or exchange may elect to apply the provisions of these regulations for any years for which the period of limitation under section 6511 has not expired by filing an amended return.

(k) *Audit protection.* The Internal Revenue Service will not challenge a taxpayer's position that a sale or exchange of a principal residence occurring before December 24, 2002 but on or after May 7, 1997, qualifies for the section 121 exclusion if the taxpayer has made a reasonable, good faith effort to comply with the requirements of section 121. Compliance with the provisions of the regulations project under section 121 (REG–105235–99 (2000–2 C.B. 447)) generally will be considered a reasonable, good faith effort to comply with the requirements of section 121.

(l) *Effective date.* This section is applicable for sales and exchanges on or after December 24, 2002. For rules on electing to apply the provisions retroactively, see paragraph (j) of this section.

[T.D. 9030, 67 FR 78361, Dec. 24, 2002; 68 FR 6350, Feb. 7, 2003]

### § 1.121–5 Suspension of 5-year period for certain members of the uniformed services and Foreign Service.

(a) *In general.* Under section 121(d)(9), a taxpayer who is serving (or whose spouse is serving) on qualified official extended duty as a member of the uniformed services or Foreign Service of the United States may elect to suspend the running of the 5-year period of ownership and use during such service but for not more than 10 years. The election does not suspend the running of the 5-year period for any period during which the running of the 5-year period with respect to any other property of the taxpayer is suspended by an election under section 121(d)(9).

(b) *Manner of making election.* The taxpayer makes the election under section 121(d)(9) and this section by filing a return for the taxable year of the sale or exchange of the taxpayer's principal residence that does not include the gain in the taxpayer's gross income.

(c) *Application of election to closed years.* A taxpayer who would otherwise qualify under §§ 1.121–1 through 1.121–4 to exclude gain from a sale or exchange of a principal residence on or after May 7, 1997, may elect to apply section 121(d)(9) and this section for any years for which a claim for refund is barred by operation of any law or rule of law by filing an amended return before November 11, 2004.

(d) *Example.* The provisions of this section are illustrated by the following example:

*Example.* B purchases a house in Virginia in 2003 that he uses as his principal residence for 3 years. For 8 years, from 2006 through 2014, B serves on qualified official extended duty as a member of the Foreign Service of the United States in Brazil. In 2015 B sells the house. B did not use the house as his principal residence for 2 of the 5 years preceding the sale. Under section 121(d)(9)and this section, however, B may elect to suspend the running of the 5-year period of ownership and use during his 8-year period of service with the Foreign Service in Brazil. If

B makes the election, the 8-year period is not counted in determining whether B used the house for 2 of the 5 years preceding the sale. Therefore, B may exclude the gain from the sale of the house under section 121.

(e) *Effective date*. This section is applicable for sales and exchanges on or after May 7, 1997.

[T.D. 9152, 69 FR 50306, Aug. 16, 2004]

### § 1.122–1 Applicable rules relating to certain reduced uniformed services retirement pay.

(a) *Rule applicable prior to January 1, 1966*. In the case of a member or former member of the uniformed services of the United States (as defined in 37 U.S.C. 101(3)) who has made an election under Subchapter I of Chapter 73 of title 10 of the U.S. Code (also referred to in this section as the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431)) to receive a reduced amount of retired or retainer pay, gross income shall include the amount of any reduction made in his retired or retainer pay before January 1, 1966, by reason of such election, unless such reduction, or portion thereof, is otherwise excluded from gross income under Part III of Subchapter B of Chapter 1 of the Internal Revenue Code of 1954 or any other provision of law.

(b) *Rule applicable after December 31, 1965*—(1) In a case of a member or former member of the uniformed services of the United States (as defined in 37 U.S.C. 101(3)), gross income shall not include the amount of any reduction made in his or her retired or retainer pay after December 31, 1965, by reason of—

(i) An election made under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431), or

(ii) The provisions of Subchapter II of Chapter 73 of title 10 of the U.S. Code (also referred to in this section as the Survivor Benefit Plan (10 U.S.C. 1447)).

(2)(i) In a case where a member or former member of the uniformed services has, pursuant to the election described in paragraph (a) of this section, received before January 1, 1966, a reduced amount of retired or retainer pay, he shall, after December 31, 1965, exclude from gross income under section 122(b) and this subdivision all amounts received as uniformed services retired or retainer pay until there has been so excluded an amount of retired or retainer pay equal to the "consideration for the contract" (as described in subdivision (iii) of this subparagraph).

(ii) Upon the death of a member or former member of the uniformed services, where the "consideration for the contract" (as described in subdivision (iii) of this subparagraph) has not been excluded in whole or in part from gross income under section 122(b) and subdivision (i) of this subparagraph, the survivor of such member who is receiving an annuity under Chapter 73 of title 10 of the U.S. Code shall, after December 31, 1965, exclude from gross income under section 72(o) and this subdivision such annuity payments received after December 31, 1965, until there has been so excluded annuity payments equalling the portion of the "consideration for the contract" not previously excluded under subdivision (i) of this subparagraph.

(iii) The term "consideration for the contract" as used in this subparagraph means—

(*a*) The total amount of the reductions, if any, before January 1, 1966, in retired or retainer pay by reason of an election under Subchapter I of Chapter 73 of title 10 of the United States Code, plus

(*b*) The total amount, if any, deposited by the serviceman at any time pursuant to the provisions of sections 1438 or 1452(d) of title 10 of the United States Code, plus

(*c*) The total amount, if any, excludable from income under section 101(b)(2)(D) and paragraph (a)(2) of §1.101–2 with respect to a survivor annuity provided by such retired or retainer pay, minus

(*d*) The total amount, if any, excluded from income before January 1, 1966, pursuant to the provisions of section 72 (b) and (d) with respect to a survivor annuity provided by such retired or retainer pay.

(iv) In determining whether there has been a recovery of the "consideration for the contract" under subdivision (i) of this subparagraph, the exclusion of retired pay from income after December 31, 1965, under sections 104(a)(4) and

105(d) shall not be considered as recovery of all or part of the "consideration for the contract."

(c) *Special rules.* In any of the following situations, the computation of the excludable portion of disability retired pay received by the member or former member of the uniformed services shall be governed by the following rules:

(1) An exclusion under section 122(a) and paragraph (b)(1) of this section is applicable only in the taxable year in which a reduction in retired pay is made under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431) or the Survivor Benefit Plan (10 U.S.C. 1447).

(2) Where the member or former member of the uniformed services is entitled to exclude the whole or a portion of his retired pay under the provisions of section 104(a)(4) or section 105(d) and under section 122(a) and paragraph (b)(1) of this section, the exclusion under section 122(a) and paragraph (b)(1) of this section shall be applied prior to the exclusions under sections 104(a)(4) and 105(d).

(3) Where the member or former member of the uniformed services waives a portion of his disability retired pay, or such retired pay reduced under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431),or the Survivor Benefit Plan (10 U.S.C. 1447) in favor of a nontaxable pension or compensation receivable under laws administered by the Veterans Administration (38 U.S.C. 3105), the waived amount of such disability retired pay, or reduced amount thereof, shall first be subtracted from any amounts which are excludable under the provisions of sections 104(a)(4) or 105(d) so as to reduce the amounts otherwise excludable under those sections.

(4) Where the member or former member of the uniformed services receives (before any forfeiture) disability retired pay (whether or not reduced under the Retired Serviceman's Family Protection Plan) or the Survivor Benefit Plan which is partially excludable under section 104(a)(4), and also forfeits a portion of such disability retired pay under the Dual Compensation Act of 1964 (5 U.S.C. 5531 or any former corresponding provision of law), the amount of the forfeiture under such Act shall be applied against disability retired pay (before any forfeiture) in the same proportion that the excludable portion of such pay under section 104(a)(4) bears to the total amount of such pay after subtraction of any reduction under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431) or the Survivor Benefit Plan (10 U.S.C. 1447).

(5) The exclusion provided by section 122(b) and paragraph (b)(2)(i) of this section shall be available with respect to repayments made upon removal from the temporary disability retired list even though such repayments were previously excluded from gross income under section 104(a)(4) or 105(d).

However, the exclusion permitted by the prior sentence will apply only to the extent the repaid amount has not been previously excluded under section 122(b) and paragraph (b)(2)(i) of this section.

(d) *Examples with respect to the Retired Serviceman's Family Protection Plan.* The rules discussed in this section relating to the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431) may be illustrated by the following examples:

*Example 1.* A, a member of the uniformed services, retires on January 1, 1963, and receives nondisability retired pay computed to be 60 percent of his active duty pay of $10,000 per year, or $6,000 per year, based upon 24 years of service. He elects, under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431), to provide his survivor with an annuity equal to one-fourth of his reduced retired pay. His retired pay of $6,000 is reduced by $600, to $5,400, in order to provide a survivor annuity of $1,350 per year or $112.50 per month. For 1963, 1964, and 1965, A must include in gross income the unreduced amount of retired pay, or $6,000. For 1966 and subsequent years, he may exclude under section 122(a) and paragraph (b)(1) of this section the $600 total annual reductions to provide the survivor annuity, and may, for 1966, further exclude from gross income under section 122(b) and paragraph (b)(2)(i) of this section the $1,800 "consideration for the contract" *i.e.,* the total reductions which were made in 1963, 1964, and 1965, to provide the survivor annuity. Accordingly, A will include $3,600 of retired pay in gross income for 1966 ($6,000 minus the sum of $600 and $1,800).

*Example 2.* Assume the facts in Example (1) except that A retires on disability resulting from active service and his disability is rated at 40 percent. The entire amount of disability retirement pay, prior to and including 1966, is excludable from gross income under sections 104(a)(4) and 105(d), and in 1966, section 122(a). Assume further that A attains retirement age on December 31, 1966, dies on January 1, 1967, and his widow then begins receiving a survivor annuity under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431). A's widow may exclude from gross income in 1967 and 1968 under section 72(o) and paragraph (b)(2)(ii) of this section, the $1,800 of ''consideration for the contract'' *i.e.*, the reductions in 1963, 1964, and 1965 to provide the survivor annuity. Thus, A's widow will exclude all of the survivor annuity she receives in 1967 ($1,350) and $450 of the $1,350 annuity received in 1968. In addition, if A had not attained retirement age at the time of his death, his widow would, under section 101 and paragraph (a)(2) of §1.101–2, exclude up to $5,000 subject to the limitations of paragraph (b)(2)(ii) of this section.

*Example 3.* Assume, in the previous example, that A dies on January 1, 1965, and his widow then begins receiving a survivor annuity. Assume further that A's widow is entitled to exclude under section 72(b) $1,000 of the $1,350 she received in 1965. Under section 72(o) and paragraph (b)(2)(ii) of this section, A's widow for 1966 will exclude the $200 remaining consideration for the contract ($1,200 − $1,000) and will include $1,150 of the survivor annuity in gross income.

*Example 4.* B, a member of the uniformed services, retires on January 1, 1966, after 32 years of active military service, and receives disability retirement pay under section 1401 of title 10, limited to 75 percent of his active duty pay of $15,000 per year, or $11,250. His disability rating is 30 percent. B has not reached retirement age (as defined in §1.79–2(b)(3)). He elects under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431) to provide his survivor with an annuity equal to one-half of his reduced retired pay and, for that purpose, his retired pay of $11,250 is reduced by $1,250 to provide an annuity of $5,000 per year. B also elects to waive retired pay in the amount of $1,000 in order to receive disability compensation in like amount under laws administered by the Veterans Administration. In addition, B is required to forfeit $4,088 of his retired pay under the Dual Compensation Act of 1964 (5 U.S.C. 5532) ($11,250 − $1,000 = $10,250 less one-half of excess thereof over $2,074) and by reason of his Federal employment is not entitled to an exclusion of his retired pay under section 105(d). B's taxable retired pay for 1966 is $3,002, computed as follows:

| | | |
|---|---|---|
| Gross retired pay | | $11,250 |
| Less: Section 122(a) exclusion | | (1,250) |
| Reduced retired pay | | 10,000 |
| Less: Retired pay waived to receive V.A. compensation | | (1,000) |
| Adjusted retired pay— | | 9,000 |
| Less: | | |
| (i) Excludable retired pay computed under section 104(a)(4) as limited by 10 U.S.C. 1403 | $4,500 | |
| (ii) Less: Retired pay, not to exceed (i), waived to receive V.A. compensation | (1,000) | |
| (iii) Net disability exclusion | | (3,500) |
| Taxable retired pay before adjustment for Dual Compensation forfeiture | | 5,500 |
| Less: | | |
| Adjustment for Dual Compensation forfeiture of $4,088 | | |
| 5500÷9000×$4,088 = $2,498 (rounded) | | (2,498) |
| Net taxable retired pay | | 3,002 |

*Example 5.* C, a member of the uniformed services retires on January 1, 1966, and receives disability retirement pay of $11,250 per year, which is reduced by $1,250 to provide a survivor annuity, and $1,000 of which is waived in order to receive disability compensation in like amount under laws administered by the Veterans Administration. C has not reached retirement age for purposes of section 105(d) and is not employed by the Federal Government. C's taxable disability retirement pay for 1966 is $300 computed as follows:

| | | |
|---|---|---|
| Adjusted retired pay | $9,000 | |
| Less: | | |
| (i) Excludable retired pay under section (a)(4) as limited by 10 U.S.C. 1403 | $4,500 | |
| (ii) Excludable retired pay under section 105(d) | 5,200 | |
| (iii) Total | 9,700 | |
| (iv) Less: Retired pay, not to exceed (iii), waived to receive V.A. compensation "sick pay" exclusion | (1,000) | |
| (v) Net disability and "sick pay" exclusion | ................ | (8,700) |
| Net taxable retired pay | 800 | |

*Example 6.* D, a member of the uniformed services, retires for physical disability resulting from active service on January 1, 1966, after 35 years of service and with a disability rated at 20 percent. His active duty pay is $4,000 per year and he attained retirement age prior to retirement. He had an election in effect under the Retired Serviceman's Family Protection Plan to provide his survivor with an annuity and his retired pay is reduced therefor by $500 per year. He waives $1,300 of his retired pay in order to receive compensation from the Veterans Administration in like amount. His taxable retired pay for 1966 is $1,200 computed as follows:

| | |
|---|---|
| Gross retired pay (75%×$4,000) | $3,000 |
| Less: Section 122(a) exclusion | (500) |
| Reduced retired pay | 2,500 |
| Less: V.A. waiver | (1,300) |
| Adjusted retired pay | 1,200 |

| | | |
|---|---|---|
| Less: | | |
| (i) Section 104(a)(4) exclusion | $800 | |
| (ii) Less: Retired pay, not to exceed (i), waived to receive V.A. compensation | (800) | |
| (iii) Net disability exclusion | 0 | |
| Net taxable retired pay | | 1,200 |

(e) *Principles applicable to the Survivor Benefit Plan.* The principles illustrated by the examples set forth in paragraph (d) of this section apply to an annuity under the Survivor Benefit Plan (10 U.S.C. 1447).

[T.D. 7043, 35 FR 8478, June 2, 1970, as amended by T.D. 7562, 43 FR 38819, Aug. 31, 1978]

### § 1.123–1 Exclusion of insurance proceeds for reimbursement of certain living expenses.

(a) *In general.* (1) Gross income does not include insurance proceeds received by an individual on or after January 1, 1969, pursuant to the terms of an insurance contract for indemnification of the temporary increase in living expenses resulting from the loss of use or occupancy of his principal residence, or a part thereof, due to damage or destruction by fire, storm, or other casualty. The term ''other casualty'' has the same meaning assigned to such term under section 165(c)(3). The exclusion also applies in the case of an individual who is denied access to his principal residence by governmental authorities because of the occurrence (or threat of occurrence) of such a casualty. The amount excludable under this section is subject to the limitation set forth in paragraph (b) of this section.

(2) This exclusion applies to amounts received as reimbursement or compensation for the reasonable and necessary increase in living expenses incurred by the insured and members of his household to maintain their customary standard of living during the loss period.

(3) This exclusion does not apply to an insurance recovery for the loss of rental income. Nor does the exclusion apply to any insurance recovery which compensates for the loss of, or damage to, real or personal property. See section 165(c)(3) relating to casualty losses; section 1231 relating to gain on an involuntary conversion of a capital asset held for more than 1 year (6 months for taxable years beginning before 1977; 9 months for taxable years beginning in 1977); and section 1033 relating to recognition of gain on an involuntary conversion. In the case of property used by an insured partially as a principal residence and partially for other purposes, the exclusion does not apply to the amount of insurance proceeds which compensates for the portion of increased expenses attributable to the nonresidential use of temporary replacement property during the loss period. In the case of denial of access to a principal residence by governmental authority, the exclusion provided by this section does not apply to an insurance recovery received by an individual as reimbursement for living expenses incurred by reason of a governmental condemnation or order not related to a casualty or the threat of a casualty.

(4)(i) Subject to the limitation set forth in paragraph (b), the amount excludable is the amount which is identified by the insurer as being paid exclusively for increased living expenses resulting from the loss of use or occupancy of the principal residence and pursuant to the terms of the insurance contract.

(ii) When a lump-sum insurance settlement includes, but does not specifically identify, compensation for property damage, loss of rental income, and increased living expenses, the amount of such settlement allocable to living expenses shall, in the case of uncontested claims, be that portion of the settlement which bears the same ratio to the total recovery as the amount of claimed increased living expense bears to the total amount of claimed losses and expenses, to the extent not in excess of the coverage limitations specified in the contract for such losses and expenses.

(iii) In the case of a lump-sum settlement involving contested claims, the insured shall establish the amount reasonably allocable to increased living expenses, consistent with the terms of the contract and other facts of the particular case.

(iv) In no event may the amount of a lump-sum settlement which is allocable to increased living expenses exceed the coverage limitation specified in the contract for increased living expenses. Where, however, a coverage limitation is applicable to the total amount payable for increased living expenses and, for example, loss of rental income, the amount of an unitemized settlement which is allocable to increased living expenses may not exceed the portion of the applicable coverage limitation which bears the same ratio to such limitation as the amount of increased living expenses bears to the sum of the amount of such increased living expenses and the amount, if any, of lost rental income.

(5) The portion of any insurance recovery for increased living expenses which exceeds the limitation set forth in paragraph (b) shall be included in gross income under section 61 of the Code.

(b) *Limitation*—(1) *Amount excludable.* The amount excludable under this section is limited to amounts received which are not in excess of the amount by which (i) total actual living expenses incurred by the insured and members of his household which result from the loss of use or occupancy of their residence exceed (ii) the total normal living expenses which would have been incurred during the loss period but are not incurred as a result of the loss of use or occupancy of the principal residence. Generally, the excludable amount represents such excess expenses actually incurred by reason of a casualty, or threat thereof, for renting suitable housing and for extraordinary expenses for transportation, food, utilities, and miscellaneous services during the period of repair or replacement of the damaged principal residence or denial of access by governmental authority.

(2) *Actual living expenses.* For purposes of this section, actual living expenses are the reasonable and necessary expenses incurred as a result of the loss of use or occupancy of the principal residence to maintain the insured and members of his household in accordance with their customary standard of living. Actual living expenses must be of such a nature as to qualify as a reimbursable expense under the terms of the applicable insurance contract without regard to monetary limitations upon coverage. Generally, actual living expenses include the cost during the loss period of temporary housing, utilities furnished at the place of temporary housing, meals obtained at restaurants which customarily would have been prepared in the residence, transportation, and other miscellaneous services. To the extent that the loss of use or occupancy of the principal residence results merely in an increase in the amount expended for items of living expenses normally incurred, such as food and transportation, only the increase in such costs shall be considered as actual living expenses in computing the limitation.

(3) *Normal living expenses not incurred.* Normal living expenses consist of the same categories of expenses comprising actual living expenses which would have been incurred but are not incurred as a result of the casualty or threat thereof. If the loss of use of the residence results in a decrease in the amount normally expended for a living expense item during the loss period, the item of normal living expense is considered not to have been incurred to the extent of the decrease for purposes of computing the limitation.

(4) *Examples.* The application of this paragraph (b) may be illustrated by the following examples:

*Example 1.* On March 1, 1970, A's principal residence, a dwelling owned by A no part of which was rented to others or used for nonresidential purposes, was extensively damaged by fire. The damaged residence was under repair during the entire month of March making it necessary for A and his spouse to obtain temporary lodging and to take their meals at a restaurant. A and his spouse incur expenses of $200 for lodging at a motel, $180 for meals which customarily would have been prepared in his residence, and $25 for commercial laundry service which customarily would have been done by A's wife. A makes (directly or through mortgage insurance), or remains liable for, the required March payment of $190 on the mortgage note on his residence. The mortgage payment results from a contractual obligation having no causal relationship to the occurrence of the casualty and is not considered as an actual living expense resulting from the loss of use of the residence. A's customary commuting expense of $40 for bus fares to and from work is decreased by $20 for the month because of the motel's closer proximity to his place of employment. Other transportation expenses remain stable. Since there has been a decrease in the amount of A's customary bus fares, normal transportation expenses are considered not to have been incurred to the extent of the decrease. Finally, A does not incur customary expenses of $150 for food obtained for home preparation, $75 for utilities expenses, and $10 for laundry cleansers. The limitation upon the excludable amount of an insurance recovery for excess living expenses is $150, computed as follows:

LIVING EXPENSES

| | Actual resulting from casualty | Normal not incurred | Increase (decrease) |
|---|---|---|---|
| Housing | $200.00 | | $200.00 |
| Utilities | | $75.00 | (75.00) |
| Meals | 180.00 | 150.00 | 30.00 |
| Transportation | | 20.00 | (20.00) |
| Laundry | 25.00 | 10.00 | 150.00 |
| Total | 405.00 | 255.00 | 15.00 |

*Example 2.* Assume the same facts as in example (1) except that the damaged residence is not owned by A but is rented to him for $100 per month and that the risk of loss is upon the lessor. Since A would not have incurred the normal rental of $100 for March, the excludable amount is limited to $50 ($150 as in previous example less $100 normal rent not incurred).

(c) *Principal residence.* Whether or not property is used by the insured taxpayer and members of his household as their principal residence depends upon all the facts and circumstances in each case. For purposes of this section, a principal residence may be a dwelling or an apartment leased to the insured as well as a dwelling or apartment owned by the insured.

[T.D. 7118, 36 FR 10729, June 2, 1971, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980]

## § 1.125–3 Effect of the Family and Medical Leave Act (FMLA) on the operation of cafeteria plans.

The following questions and answers provide guidance on the effect of the Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 *et seq.*, on the operation of cafeteria plans:

Q–1: May an employee revoke coverage or cease payment of his or her share of group health plan premiums when taking unpaid FMLA, 29 U.S.C. 2601 *et seq.*, leave?

A–1: Yes. An employer must either allow an employee on unpaid FMLA leave to revoke coverage, or continue coverage but allow the employee to discontinue payment of his or her share of the premium for group health plan coverage (including a health flexible spending arrangement (FSA)) under a cafeteria plan for the period of the FMLA leave. See 29 CFR 825.209(e). FMLA does not require that an employer allow an employee to revoke coverage if the employer pays the employee's share of premiums. As discussed in Q&A–3, if the employer continues coverage during an FMLA leave, the employer may recover the employee's share of the premiums when the employee returns to work. FMLA also provides the employee a right to be reinstated in the group health plan coverage (including a health FSA) provided under a cafeteria plan upon returning from FMLA leave if the employee's group health plan coverage terminated while on FMLA leave (either by revocation or due to nonpayment of premiums). Such an employee is entitled, to the extent required under FMLA, to be reinstated on the same terms as prior to taking FMLA leave (including family or dependent coverage), subject to any changes in benefit levels that may have taken place during the period of FMLA leave as provided in 29 CFR 825.215(d)(1). See 29 CFR 825.209(e) and 825.215(d). In addition, such an employee has the right to revoke or change elections under §1.125–4 (e.g., because of changes in status or cost or coverage changes as provided under §1.125–4) under the same terms and conditions as are available to employees participating in the cafeteria plan who are working and not on FMLA leave.

Q–2: Who is responsible for making premium payments under a cafeteria plan when an employee on FMLA leave continues group health plan coverage?

A–2: FMLA provides that an employee is entitled to continue group health plan coverage during FMLA leave whether or not that coverage is provided under a health FSA or other component of a cafeteria plan. See 29 CFR 825.209(b). FMLA permits an employer to require an employee who chooses to continue group health plan coverage while on FMLA leave to be responsible for the share of group health premiums that would be allocable to the employee if the employee were working, and, for this purpose, treats amounts paid pursuant to a pre-tax salary reduction agreement as amounts allocable to the employee. However, FMLA requires the employer to continue to contribute the share of the cost of the employee's coverage that the employer was paying before the employee commenced FMLA leave. See 29 CFR 825.100(b) and 825.210(a).

Q–3: What payment options are required or permitted to be offered under a cafeteria plan to an employee who continues group health plan coverage while on unpaid FMLA leave, and what is the tax treatment of these payments?

A–3: (a) *In general*. Subject to the limitations described in paragraph (b) of this Q&A–3, a cafeteria plan may offer one or more of the following payment options, or a combination of these options, to an employee who continues group health plan coverage (including a health FSA) while on unpaid FMLA leave; provided that the payment options for employees on FMLA leave are offered on terms at least as favorable as those offered to employees not on FMLA leave. These options are referred to in this section as pre-pay, pay-as-you-go, and catch-up. See also the FMLA notice requirements at 29 CFR 825.301(b)(1)(iv).

(1) *Pre-pay*. (i) Under the pre-pay option, a cafeteria plan may permit an employee to pay, prior to commencement of the FMLA leave period, the amounts due for the FMLA leave period. However, FMLA provides that the employer may not mandate that an employee pre-pay the amounts due for the leave period. See 29 CFR 825.210(c)(3) and (4).

(ii) Contributions under the pre-pay option may be made on a pre-tax salary reduction basis from any taxable compensation (including from unused sick days or vacation days). However, see Q&A–5 of this section regarding additional restrictions on pre-tax salary reduction contributions when an employee's FMLA leave spans two cafeteria plan years.

(iii) Contributions under the pre-pay option may also be made on an after-tax basis.

(2) *Pay-as-you-go*. (i) Under the pay-as-you-go option, employees may pay their share of the premium payments on the same schedule as payments would have been made if the employee were not on leave or under any other payment schedule permitted by the Labor Regulations at 29 CFR 825.210(c) (e.g., on the same schedule as payments are made under section 4980B (relating to coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 26 U.S.C. 4980B), under the employer's existing rules for payment by employees on leave without pay, or under any other system voluntarily agreed to between the employer and the employee that is not inconsistent with this section or with 29 CFR 825.210(c)).

(ii) Contributions under the pay-as-you-go option are generally made by the employee on an after-tax basis. However, contributions may be made on a pre-tax basis to the extent that the contributions are made from taxable compensation (e.g., from unused sick days or vacation days) that is due the employee during the leave period.

(iii) An employer is not required to continue the group health coverage of an employee who fails to make required premium payments while on FMLA leave, provided that the employer follows the notice procedures required under FMLA. See 29 CFR 825.212. However, if the employer chooses to continue the health coverage of an employee who fails to pay his or her share of the premium payments while on FMLA leave, FMLA permits the employer to recoup the premiums (to the extent of the employee's share). See 29 CFR 825.212(b). Such recoupment may be made as set forth in paragraphs (a)(3)(i) and (ii) of this Q&A–3. See also Q&A–6 of this section regarding coverage under a health FSA when an employee fails to make the required premium payments while on FMLA leave.

(3) *Catch-up*. (i) Under the catch-up option, the employer and the employee

may agree in advance that the group coverage will continue during the period of unpaid FMLA leave, and that the employee will not pay premiums until the employee returns from the FMLA leave. Where an employee is electing to use the catch-up option, the employer and the employee must agree in advance of the coverage period that: the employee elects to continue health coverage while on unpaid FMLA leave; the employer assumes responsibility for advancing payment of the premiums on the employee's behalf during the FMLA leave; and these advance amounts are to be paid by the employee when the employee returns from FMLA leave.

(ii) When an employee fails to make required premium payments while on FMLA leave, an employer is permitted to utilize the catch-up option to recoup the employee's share of premium payments when the employee returns from FMLA leave. See, e.g., 29 CFR 825.212(b). If the employer chooses to continue group coverage under these circumstances, the prior agreement of the employee, as set forth in paragraph (a)(3)(i) of this Q&A–3, is not required.

(iii) Contributions under the catch-up option may be made on a pre-tax salary reduction basis from any available taxable compensation (including from unused sick days and vacation days) after the employee returns from FMLA leave. The cafeteria plan may provide for the catch-up option to apply on a pre-tax salary reduction basis if premiums have not been paid on any other basis (*i.e.*, have not been paid under the pre-pay or pay-as-you-go options or on a catch-up after-tax basis).

(iv) Contributions under the catch-up option may also be made on an after-tax basis.

(b) *Exceptions*. Whatever payment options are offered to employees on non-FMLA leave must be offered to employees on FMLA leave. In accordance with 29 CFR 825.210(c), cafeteria plans may offer one or more of the payment options described in paragraph (a) of this Q&A–3, with the following exceptions:

(1) FMLA does not permit the pre-pay option to be the sole option offered to employees on FMLA leave. However, the cafeteria plan may include pre-payment as an option for employees on FMLA leave, even if such option is not offered to employees on non-FMLA leave-without-pay.

(2) FMLA allows the catch-up option to be the sole option offered to employees on FMLA leave if and only if the catch-up option is the sole option offered to employees on non-FMLA leave-without-pay.

(3) If the pay-as-you-go option is offered to employees on non-FMLA leave-without-pay, the option must also be offered to employees on FMLA leave. The employer may also offer employees on FMLA leave the pre-pay option and/or the catch-up option.

(c) *Voluntary waiver of employee payments*. In addition to the foregoing payment options, an employer may voluntarily waive, on a nondiscriminatory basis, the requirement that employees who elect to continue group health coverage while on FMLA leave pay the amounts the employees would otherwise be required to pay for the leave period.

(d) *Example*. The following example illustrates this Q&A–3:

*Example*. (i) Employer Y allows employees to pay premiums for group health coverage during an FMLA leave on an after-tax basis while the employee is on unpaid FMLA leave. Under the terms of Y's cafeteria plan, if an employee elects to continue health coverage during an unpaid FMLA leave and fails to pay one or more of the after-tax premium payments due for that coverage, the employee's salary after the employee returns from FMLA leave is reduced to cover unpaid premiums (*i.e.* the premiums that were to be paid by the employee on an after-tax basis during the FMLA leave, but were paid by the employer instead).

(ii) In this *Example*, Y's cafeteria plan satisfies the conditions in this Q&A–3. Y's cafeteria plan would also satisfy the conditions in this Q&A–3 if the plan provided for coverage to cease in the event the employee fails to make a premium payment when due during an unpaid FMLA leave.

Q–4: Do the special FMLA requirements concerning payment of premiums by an employee who continues group health plan coverage under a cafeteria plan apply if the employee is on paid FMLA leave?

A–4: No. The Labor Regulations provide that, if an employee's FMLA leave is paid leave as described at 29 CFR 825.207 and the employer mandates that the employee continue group health plan coverage while on FMLA leave, the employee's share of the premiums must be paid by the method normally used during any paid leave (e.g., by pre-tax salary reduction if the employee's share of premiums were paid by pre-tax salary reduction before the FMLA leave began). See 29 CFR 825.210(b).

Q–5: What restrictions apply to contributions when an employee's FMLA leave spans two cafeteria plan years?

A–5: (a) No amount will be included in an employee's gross income due to participation in a cafeteria plan during FMLA leave, provided that the plan complies with other generally applicable cafeteria plan requirements. Among other requirements, a plan may not operate in a manner that enables employees on FMLA leave to defer compensation from one cafeteria plan year to a subsequent cafeteria plan year. See section 125(d)(2).

(b) The following example illustrates this Q&A–5:

*Example.* (i) Employee A elects group health coverage under a calendar year cafeteria plan maintained by Employer X. Employee A's premium for health coverage is $100 per month throughout the 12-month period of coverage. Employee A takes FMLA leave for 12 weeks beginning on October 31 after making 10 months of premium payments totaling $1,000 (10 months × $100 = $1,000). Employee A elects to continue health coverage while on FMLA leave and utilizes the pre-pay option by applying his or her unused sick days in order to make the required premium payments due while he or she is on FMLA leave.

(ii) Because A cannot defer compensation from one plan year to a subsequent plan year, A may pre-pay the premiums due in November and December (*i.e.*, $100 per month) on a pre-tax basis, but A cannot pre-pay the premium payment due in January on a pre-tax basis. If A participates in the cafeteria plan in the subsequent plan year, A must either pre-pay for January on an after-tax basis or use another option (e.g., pay-as-you-go, catch-up, reduction in unused sick days, etc.) to make the premium payment due in January.

Q–6: Are there special rules concerning employees taking FMLA leave who participate in health FSAs offered under a cafeteria plan?

A–6: (a) *In general.* (1) A group health plan that is a flexible spending arrangement (FSA) offered under a cafeteria plan must conform to the generally applicable rules in this section concerning employees who take FMLA leave. Thus, to the extent required by FMLA (see 29 CFR 825.209(b)), an employer must—

(i) Permit an employee taking FMLA leave to continue coverage under a health FSA while on FMLA leave; and

(ii) If an employee is on unpaid FMLA leave, either—

(A) Allow the employee to revoke coverage; or

(B) Continue coverage, but allow the employee to discontinue payment of his or her share of the premium for the health FSA under the cafeteria plan during the unpaid FMLA leave period.

(2) Under FMLA, the plan must permit the employee to be reinstated in health coverage upon return from FMLA leave on the same terms as if the employee had been working throughout the leave period, without a break in coverage. See 29 CFR 825.214(a) and 825.215(d)(1) and paragraph (b)(2) of this Q&A–6. In addition, under FMLA, a plan may require an employee to be reinstated in health coverage upon return from a period of unpaid FMLA leave, provided that employees who return from a period of unpaid leave not covered by the FMLA are also required to resume participation upon return from leave.

(b) *Coverage.* (1) Regardless of the payment option selected under Q&A–3 of this section, for so long as the employee continues health FSA coverage (or for so long as the employer continues the health FSA coverage of an employee who fails to make the required contributions as described in Q&A–3(a)(2)(iii) of this section), the full amount of the elected health FSA coverage, less any prior reimbursements, must be available to the employee at all times, including the FMLA leave period.

(2)(i) If an employee's coverage under the health FSA terminates while the employee is on FMLA leave, the employee is not entitled to receive reimbursements for claims incurred during the period when the coverage is terminated. If an employee subsequently elects or the employer requires the employee to be reinstated in the health FSA upon return from FMLA leave for the remainder of the plan year, the employee may not retroactively elect health FSA coverage for claims incurred during the period when the coverage was terminated. Upon reinstatement into a health FSA upon return from FMLA leave (either because the employee elects reinstatement or because the employer requires reinstatement), the employee has the right under FMLA: to resume coverage at the level in effect before the FMLA leave and make up the unpaid premium payments, or to resume coverage at a level that is reduced and resume premium payments at the level in effect before the FMLA leave. If an employee chooses to resume health FSA coverage at a level that is reduced, the coverage is prorated for the period during the FMLA leave for which no premiums were paid. In both cases, the coverage level is reduced by prior reimbursements.

(ii) FMLA requires that an employee on FMLA leave have the right to revoke or change elections (because of events described in §1.125–4) under the same terms and conditions that apply to employees participating in the cafeteria plan who are not on FMLA leave. Thus, for example, if a group health plan offers an annual open enrollment period to active employees, then, under FMLA, an employee on FMLA leave when the open enrollment is offered must be offered the right to make election changes on the same basis as other employees. Similarly, if a group health plan decides to offer a new benefit package option and allows active employees to elect the new option, then, under FMLA, an employee on FMLA leave must be allowed to elect the new option on the same basis as other employees.

(3) The following examples illustrate the rules in this Q&A–6:

*Example 1.* (i) Employee B elects $1,200 worth of coverage under a calendar year health FSA provided under a cafeteria plan, with an annual premium of $1,200. Employee B is permitted to pay the $1,200 through pretax salary reduction amounts of $100 per month throughout the 12-month period of coverage. Employee B incurs no medical expenses prior to April 1. On April 1, B takes FMLA leave after making three months of contributions totaling $300 (3 months × $100 = $300). Employee B's coverage ceases during the FMLA leave. Consequently, B makes no premium payments for the months of April, May, and June, and B is not entitled to submit claims or receive reimbursements for expenses incurred during this period. Employee B returns from FMLA leave and elects to be reinstated in the health FSA on July 1.

(ii) Employee B must be given a choice of resuming coverage at the level in effect before the FMLA leave (*i.e.*, $1,200) and making up the unpaid premium payments ($300), or resuming health FSA coverage at a level that is reduced on a prorata basis for the period during the FMLA leave for which no premiums were paid (*i.e.*, reduced for 3 months or ¼ of the plan year) less prior reimbursements (*i.e.*, $0) with premium payments due in the same monthly amount payable before the leave (*i.e.*, $100 per month). Consequently, if B chooses to resume coverage at the level in effect before the FMLA leave, B's coverage for the remainder of the plan year would equal $1,200 and B's monthly premiums would be increased to $150 per month for the remainder of the plan year, to make up the $300 in premiums missed ($100 per month plus $50 per month ($300 divided by the remaining 6 months)). If B chooses prorated coverage, B's coverage for the remainder of the plan year would equal $900, and B would resume making premium payments of $100 per month for the remainder of the plan year.

*Example 2.* (i) Assume the same facts as *Example 1* except that B incurred medical expenses totaling $200 in February and obtained reimbursement of these expenses.

(ii) The results are the same as in *Example 1*, except that if B chooses to resume coverage at the level in effect before the FMLA leave, B's coverage for the remainder of the year would equal $1,000 ($1,200 reduced by $200) and the monthly payments for the remainder of the year would still equal $150. If instead B chooses prorated coverage, B's coverage for the remainder of the plan year would equal $700 ($1,200 prorated for 3 months, and then reduced by $200) and the monthly payments for the remainder of the year would still equal $100.

*Example 3.* (i) Assume the same facts as *Example 1* except that, prior to taking FMLA leave, B elects to continue health FSA coverage during the FMLA leave. The plan permits B (and B elects) to use the catch-up payment option described in Q&A–3 of this section, and as further permitted under the plan, B chooses to repay the $300 in missed payments on a ratable basis over the remaining 6-month period of coverage (*i.e.*, $50 per month).

(ii) Thus, B's monthly premium payments for the remainder of the plan year will be $150 ($100 + $50).

Q–7: Are employees entitled to non-health benefits while taking FMLA leave?

A–7: FMLA does not require an employer to maintain an employee's non-health benefits (e.g., life insurance) during FMLA leave. An employee's entitlement to benefits other than group health benefits under a cafeteria plan during a period of FMLA leave is to be determined by the employer's established policy for providing such benefits when the employee is on non-FMLA leave (paid or unpaid). See 29 CFR 825.209(h). Therefore, an employee who takes FMLA leave is entitled to revoke an election of non-health benefits under a cafeteria plan to the same extent as employees taking non-FMLA leave are permitted to revoke elections of non-health benefits under a cafeteria plan. For example, election changes are permitted due to changes of status or upon enrollment for a new plan year. See §1.125–4. However, FMLA provides that, in certain cases, an employer may continue an employee's non-health benefits under the employer's cafeteria plan while the employee is on FMLA leave in order to ensure that the employer can meet its responsibility to provide equivalent benefits to the employee upon return from unpaid FMLA. If the employer continues an employee's non-health benefits during FMLA leave, the employer is entitled to recoup the costs incurred for paying the employee's share of the premiums during the FMLA leave period. See 29 CFR 825.213(b). Such recoupment may be on a pre-tax basis. A cafeteria plan must, as required by FMLA, permit an employee whose coverage terminated while on FMLA leave (either by revocation or nonpayment of premiums) to be reinstated in the cafeteria plan on return from FMLA leave. See 29 CFR 825.214(a) and 825.215(d).

Q–8: What is the applicability date of the regulations in this section?

A–8: This section is applicable for cafeteria plan years beginning on or after January 1, 2002.

[T.D. 8966, 66 FR 52677, Oct. 17, 2001; 66 FR 63920, Dec. 11, 2001]

### § 1.125–4 Permitted election changes.

(a) *Election changes.* A cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in paragraphs (b) through (g) of this section. Section 125 does not require a cafeteria plan to permit any of these changes. See paragraph (h) of this section for special provisions relating to qualified cash or deferred arrangements, and paragraph (i) of this section for special definitions used in this section.

(b) *Special enrollment rights*—(1) *In general.* A cafeteria plan may permit an employee to revoke an election for coverage under a group health plan during a period of coverage and make a new election that corresponds with the special enrollment rights provided in section 9801(f).

(2) *Examples.* The following examples illustrate the application of this paragraph (b):

*Example 1.* (i) Employer *M* provides health coverage for its employees pursuant to a plan that is subject to section 9801(f). Under the plan, employees may elect either employee-only coverage or family coverage. *M* also maintains a calendar year cafeteria plan under which qualified benefits, including health coverage, are funded through salary reduction. *M*'s employee, *A*, is married to *B* and they have a child, *C*. In accordance with *M*'s cafeteria plan, Employee *A* elects employee-only health coverage before the beginning of the calendar year. During the year, *A* and *B* adopt a child, *D*. Within 30 days thereafter, *A* wants to revoke *A*'s election for employee-only health coverage and obtain family health coverage for *A*'s spouse, *C*, and *D* as of the date of *D*'s adoption. Employee *A* satisfies the conditions for special enrollment of an employee with a new dependent under section 9801(f)(2), so that *A* may enroll in family coverage under *M*'s accident or health plan in order to provide coverage effective as of the date of *D*'s adoption.

(ii) *M*'s cafeteria plan may permit *A* to change *A*'s salary reduction election to family coverage for salary not yet currently available. The increased salary reduction is permitted to reflect the cost of family coverage from the date of adoption. (*A*'s adoption of *D* is also a change in status, and the election of family coverage is consistent with that change in status. Thus, under paragraph (c) of this section, *M*'s cafeteria plan could permit *A* to elect family coverage prospectively in order to cover *B*, *C*, and *D* for the remaining portion of the period of coverage.)

*Example 2.* (i) The employer plans and permissible coverage are the same as in *Example 1*. Before the beginning of the calendar year, Employee *E* elects employee-only health coverage under *M*'s cafeteria plan. Employee *E* marries *F* during the plan year. *F*'s employer, *N*, offers health coverage to *N*'s employees, and, prior to the marriage, *F* had elected employee-only coverage. Employee *E* wants to revoke the election for employee-only coverage under *M*'s cafeteria plan, and is considering electing family health coverage under *M*'s plan or obtaining family health coverage under *N*'s plan.

(ii) *M*'s cafeteria plan may permit *E* to change *E*'s salary reduction election to reflect the change to family coverage under *M*'s accident or health plan because the marriage would result in special enrollment rights under section 9801(f), pursuant to which an election of family coverage under *M*'s accident or health plan would be required to be effective no later than the first day of the first calendar month beginning after the completed request for enrollment is received by the plan. Since no retroactive coverage is required in the event of marriage under section 9801(f), *E*'s salary reduction election may only be changed on a prospective basis. (*E*'s marriage to *F* is also a change in status under paragraph (c) of this section, as illustrated in Example 1 of paragraph (c)(4) of this section.)

(c) *Changes in status*—(1) *Change in status rule*. A cafeteria plan may permit an employee to revoke an election during a period of coverage with respect to a qualified benefits plan (defined in paragraph (i)(8) of this section) to which this paragraph (c) applies and make a new election for the remaining portion of the period (referred to in this section as an election change) if, under the facts and circumstances—

(i) A change in status described in paragraph (c)(2) of this section occurs; and

(ii) The election change satisfies the consistency rule of paragraph (c)(3) of this section.

(2) *Change in status events*. The following events are changes in status for purposes of this paragraph (c):

(i) *Legal marital status*. Events that change an employee's legal marital status, including the following: marriage; death of spouse; divorce; legal separation; and annulment.

(ii) *Number of dependents*. Events that change an employee's number of dependents, including the following: birth; death; adoption; and placement for adoption.

(iii) *Employment status*. Any of the following events that change the employment status of the employee, the employee's spouse, or the employee's dependent: a termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; and a change in worksite. In addition, if the eligibility conditions of the cafeteria plan or other employee benefit plan of the employer of the employee, spouse, or dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this paragraph (c) (e.g., if a plan only applies to salaried employees and an employee switches from salaried to hourly-paid with the consequence that the employee ceases to be eligible for the plan, then that change constitutes a change in employment status under this paragraph (c)(2)(iii)).

(iv) *Dependent satisfies or ceases to satisfy eligibility requirements*. Events that cause an employee's dependent to satisfy or cease to satisfy eligibility requirements for coverage on account of attainment of age, student status, or any similar circumstance.

(v) *Residence*. A change in the place of residence of the employee, spouse, or dependent.

(vi) *Adoption assistance*. For purposes of adoption assistance provided through a cafeteria plan, the commencement or termination of an adoption proceeding.

(3) *Consistency rule*—(i) *Application to accident or health coverage and group-term life insurance*. An election change satisfies the requirements of this paragraph (c)(3) with respect to accident or health coverage or group-term life insurance only if the election change is on account of and corresponds with a change in status that affects eligibility for coverage under an employer's plan. A change in status that affects eligibility under an employer's plan includes a change in status that results in an increase or decrease in the number of an employee's family members or dependents who may benefit from coverage under the plan.

(ii) *Application to other qualified benefits.* An election change satisfies the requirements of this paragraph (c)(3) with respect to other qualified benefits if the election change is on account of and corresponds with a change in status that affects eligibility for coverage under an employer's plan. An election change also satisfies the requirements of this paragraph (c)(3) if the election change is on account of and corresponds with a change in status that effects expenses described in section 129 (including employment-related expenses as defined in section 21(b)(2)) with respect to dependent care assistance, or expenses described in section 137 (including qualified adoption expenses as defined in section 137(d)) with respect to adoption assistance.

(iii) *Application of consistency rule.* If the change in status is the employee's divorce, annulment or legal separation from a spouse, the death of a spouse or dependent, or a dependent ceasing to satisfy the eligibility requirements for coverage, an employee's election under the cafeteria plan to cancel accident or health insurance coverage for any individual other than the spouse involved in the divorce, annulment or legal separation, the deceased spouse or dependent, or the dependent that ceased to satisfy the eligibility requirements for coverage, respectively, fails to correspond with that change in status. Thus, if a dependent dies or ceases to satisfy the eligibility requirements for coverage, the employee's election to cancel accident or health coverage for any other dependent, for the employee, or for the employee's spouse fails to correspond with that change in status. In addition, if an employee, spouse, or dependent gains eligibility for coverage under a family member plan (as defined in paragraph (i)(5) of this section) as a result of a change in marital status under paragraph (c)(2)(i) of this section or a change in employment status under paragraph (c)(2)(iii) of this section, an employee's election under the cafeteria plan to cease or decrease coverage for that individual under the cafeteria plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan. With respect to group-term life insurance and disability coverage (as defined in paragraph (i)(4) of this section), an election under a cafeteria plan to increase coverage (or an election to decrease coverage) in response to a change in status described in paragraph (c)(2) of this section is deemed to correspond with that change in status as required by paragraph (c)(3)(i) of this section.

(iv) *Exception for COBRA.* If the employee, spouse, or dependent becomes eligible for continuation coverage under the group health plan of the employee's employer as provided in section 4980B or any similar state law, a cafeteria plan may permit the employee to elect to increase payments under the employer's cafeteria plan in order to pay for the continuation coverage.

(4) *Examples.* The following examples illustrate the application of this paragraph (c):

*Example 1.* (i) Employer *M* provides health coverage (including a health FSA) for its employees through its cafeteria plan. Before the beginning of the calendar year, Employee *A* elects employee-only health coverage under *M*'s cafeteria plan and elects salary reduction contributions to fund coverage under the health FSA. Employee *A* marries *B* during the year. Employee *B*'s employer, *N*, offers health coverage to *N*'s employees (but not including any health FSA), and, prior to the marriage, *B* had elected employee-only coverage. Employee *A* wants to revoke the election for employee-only coverage, and is considering electing family health coverage under *M*'s plan or obtaining family health coverage under *N*'s plan.

(ii) Employee *A*'s marriage to *B* is a change in status under paragraph (c)(2)(i) of this section, pursuant to which *B* has become eligible for coverage under *M*'s health plan under paragraph (c)(3)(i) of this section. Two possible election changes by *A* correspond with the change in status: Employee *A* may elect family health coverage under *M*'s plan to cover *A* and *B*; or *A* may cancel coverage under *M*'s plan, if *B* elects family health coverage under *N*'s plan to cover *A* and *B*. Thus, *M*'s cafeteria plan may permit *A* to make either election change.

(iii) Employee *A* may also increase salary reduction contributions to fund coverage for *B* under the health FSA.

*Example 2.* (i) Employee *C*, a single parent, elects family health coverage under a calendar year cafeteria plan maintained by Employer *O*. Employee *C* and *C*'s 21-year old child, *D*, are covered under *O*'s health plan. During the year, *D* graduates from college.

Under the terms of the health plan, dependents over the age of 19 must be full-time students to receive coverage. Employee *C* wants to revoke *C*'s election for family health coverage and obtain employee-only coverage under *O*'s cafeteria plan.

(ii) *D*'s loss of eligibility for coverage under the terms of the health plan is a change in status under paragraph (c)(2)(iv) of this section. A revocation of *C*'s election for family coverage and new election for employee-only coverage corresponds with the change in status. Thus, *O*'s cafeteria plan may permit *C* to elect employee-only coverage.

*Example 3.* (i) Employee *E* is married to *F* and they have one child, *G*. Employee *E* is employed by Employer *P*, and *P* maintains a calendar year cafeteria plan that allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. Under the plan, before the beginning of the calendar year, *E* elects family health coverage for *E*, *F*, and *G*. *E* and *F* divorce during the year and *F* loses eligibility for coverage under *P*'s plan. *G* does not lose eligibility for health coverage under *P*'s plan upon the divorce. *E* now wants to revoke *E*'s election under the cafeteria plan and elect no coverage.

(ii) The divorce is a change in status under paragraph (c)(2)(i). A change in the cafeteria plan election to cancel health coverage for *F* is consistent with that change in status. However, an election change to cancel *E*'s or *G*'s health coverage does not satisfy the consistency rule under paragraph (c)(3)(iii) of this section regarding cancellation of coverage for an employee's other dependents in the event of divorce. Therefore, the cafeteria plan may not permit *E* to elect no coverage. However, an election to change to employee-plus-one-dependent health coverage would correspond with the change in status, and thus the cafeteria plan may permit *E* to elect employee-plus-one-dependent health coverage.

(iii) In addition, under paragraph (f)(4) of this section, if *F* makes an election change to cover *G* under *F*'s employer's plan, then *E* may make a corresponding change to elect employee-only coverage under *P*'s cafeteria plan.

*Example 4.* (i) Employer *R* maintains a calendar year cafeteria plan under which full-time employees may elect coverage under one of three benefit package options provided under an accident or health plan: an indemnity option or either of two HMO options for employees who work in the respective service areas of the two HMOs. Employee *A*, who works in the service area of HMO #1, elects the HMO #1 option. During the year, *A* is transferred to another work location which is outside the HMO #1 service area and inside the HMO #2 service area.

(ii) The transfer is a change in status under paragraph (c)(2)(iii) of this section (relating to a change in worksite), and, under the consistency rule in paragraph (c)(3) of this section, the cafeteria plan may permit *A* to make an election change to elect the indemnity option or HMO #2 or to cancel accident or health coverage.

(iii) The change in work location has no effect on *A*'s eligibility under R's health FSA, so no change in *A's* health FSA is authorized under this paragraph (c).

*Example 5.* (i) Employer *S* maintains a calendar year cafeteria plan that allows employees to elect coverage under an accident or health plan providing indemnity coverage and coverage under a health FSA. Prior to the beginning of the calendar year, Employee *B* elects employee-only indemnity coverage, and elects salary reduction contributions of $600 during the year to fund coverage under the health FSA for up to $600 of reimbursements for the year. Employee *B*'s spouse, *C*, has employee-only coverage under an accident or health plan maintained by *C*'s employer. During the year, *C* terminates employment and loses coverage under that plan. *B* now wants to elect family coverage under *S*'s accident or health plan and increase *B*'s FSA election.

(ii) *C*'s termination of employment is a change in status under paragraph (c)(2)(iii) of this section, and the election change satisfies the consistency rule of paragraph (c)(3) of this section. Therefore, the cafeteria plan may permit *B* to elect family coverage under *S*'s accident or health plan and to increase *B*'s FSA coverage.

*Example 6.* (i) Employer *T* provides group-term life insurance coverage as described under section 79. Under *T*'s plan, an employee may elect life insurance coverage in an amount up to $50,000. *T* also maintains a calendar year cafeteria plan under which qualified benefits, including the group-term life insurance coverage, are funded through salary reduction. Employee *D* has a spouse and a child. Before the beginning of the year, *D* elects $10,000 of group-term life insurance coverage. During the year, *D* is divorced.

(ii) The divorce is a change in status under paragraph (c)(2)(i) of this section. Under paragraph (c)(3)(iii) of this section, either an increase or a decrease in coverage is consistent with this change in status. Thus, *T*'s cafeteria plan may permit *D* to increase or to decrease *D*'s group-term life insurance coverage.

*Example 7.* (i) Employee *E* is married to F and they have one child, *G*. Employee *E*'s employer, *U*, maintains a cafeteria plan under which employees may elect no coverage, employee-only coverage, or family coverage under a group health plan maintained by *U*, and may make a separate vision coverage election under the plan. Before the beginning of the calendar year, *E* elects family health coverage and no vision coverage under *U*'s cafeteria plan. Employee *F*'s employer, *V*, maintains a cafeteria plan under which employees may elect no coverage, employee-only coverage, or family coverage under a group health plan maintained by *V*, and may make a separate vision coverage election under the plan. Before the beginning of the calendar year, *F* elects no health coverage and employee-only vision coverage under *V*'s plan. During the year, *F* terminates employment with *V* and loses vision coverage under *V*'s plan. Employee *E* now wants to elect family vision coverage under *U*'s group health plan.

(ii) *F*'s termination of employment is a change in status under paragraph (c)(2)(iii) of this section, and the election change satisfies the consistency rule of paragraph (c)(3) of this section. Therefore, *U*'s cafeteria plan may permit *E* to elect family vision coverage (covering *E* and *G* as well as *F*) under *U*'s group health plan.

*Example 8.* (i) Before the beginning of the year, Employee *H* elects to participate in a cafeteria plan maintained by *H*'s employer, *W*. However, in order to change the election during the year so as to cancel coverage, and by prior understanding with *W*, *H* terminates employment and resumes employment one week later.

(ii) In this *Example 8*, under the facts and circumstances, a principal purpose of the termination of employment was to alter the election, and reinstatement of employment was understood at the time of termination. Accordingly, *H* does not have a change in status under paragraph (c)(2)(iii) of this section.

(iii) However, *H*'s termination of employment would constitute a change in status, permitting a cancellation of coverage during the period of unemployment, if *H*'s original cafeteria plan election for the period of coverage was reinstated upon resumption of employment (for example, if *W*'s cafeteria plan contains a provision requiring an employee who resumes employment within 30 days, without any other intervening event that would permit a change in election, to return to the election in effect prior to termination of employment).

(iv) If, instead, *H* terminates employment and cancels coverage during a period of unemployment, and then returns to work more than 30 days following termination of employment, the cafeteria plan may permit *H* the option of returning to the election in effect prior to termination of employment or making a new election under the plan. Alternatively, the cafeteria plan may prohibit *H* from returning to the plan during that plan year.

*Example 9.* (i) Employee *A* has one child, *B*. Employee *A*'s employer, *X*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Prior to the beginning of the calendar year, *A* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *B* reaches the age of 13, and *A* wants to cancel coverage under the dependent care FSA.

(ii) When *B* turns 13, *B* ceases to satisfy the definition of qualifying individual under section 21(b)(1) of the Internal Revenue Code. Accordingly, *B*'s attainment of age 13 is a change in status under paragraph (c)(2)(iv) of this section that affects *A*'s employment-related expenses as defined in section 21(b)(2). Therefore, *A* may make a corresponding change under *X*'s cafeteria plan to cancel coverage under the dependent care FSA.

*Example 10.* (i) Employer *Y* maintains a calendar year cafeteria plan under which full-time employees may elect coverage under either an indemnity option or an HMO. Employee *C* elects the employee-only indemnity option. During the year, *C* marries *D*. *D* has two children from a previous marriage, and has family group health coverage in a cafeteria plan sponsored by *D*'s employer, *Z*. *C* wishes to change from employee-only indemnity coverage to HMO coverage for the family. *D* wishes to cease coverage in *Z*'s group health plan and certifies to *Z* that *D* will have family coverage under *C*'s plan (and *Z* has no reason to believe the certification is incorrect).

(ii) The marriage is a change in status under paragraph (c)(2)(i) of this section. Under the consistency rule in paragraph (c)(3) of this section, *Y*'s cafeteria plan may permit *C* to change his or her salary reduction contributions to reflect the change from employee-only indemnity to HMO family coverage, and *Z* may permit *D* to revoke coverage under *Z*'s cafeteria plan.

(d) *Judgment, decree, or order*—(1) *Conforming election change.* This paragraph (d) applies to a judgment, decree, or order (order) resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order as defined in section 609 of the Employee Retirement Income Security Act of 1974 (Public Law 93–406 (88 Stat. 829))) that requires accident or health coverage for an employee's child or for a foster child who is a dependent of the employee. A cafeteria plan will not fail to satisfy section 125 if it—

(i) Changes the employee's election to provide coverage for the child if the order requires coverage for the child under the employee's plan; or

(ii) Permits the employee to make an election change to cancel coverage for the child if:

(A) The order requires the spouse, former spouse, or other individual to provide coverage for the child; and

(B) That coverage is, in fact, provided.

(2) *Example*. The following example illustrates the application of this paragraph (d):

*Example*. (i) Employer *M* maintains a calendar year cafeteria plan that allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. *M*'s employee, *A*, is married to *B* and they have one child, *C*. Before the beginning of the year, *A* elects employee-only health coverage. Employee *A* divorces *B* during the year and, pursuant to *A*'s divorce agreement with *B*, *M*'s health plan receives a qualified medical child support order (as defined in section 609 of the Employee Retirement Income Security Act of 1974) during the plan year. The order requires *M*'s health plan to cover *C*.

(ii) Under this paragraph (d), *M*'s cafeteria plan may change *A*'s election from employee-only health coverage to employee-plus-one-dependent coverage in order to cover *C*.

(e) *Entitlement to Medicare or Medicaid*. If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (*i.e.*, becomes enrolled) under Part A or Part B of title XVIII of the Social Security Act (Medicare) (Public Law 89–97 (79 Stat. 291)) or title XIX of the Social Security Act (Medicaid) (Public Law 89–97 (79 Stat. 343)), other than coverage consisting solely of benefits under section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), a cafeteria plan may permit the employee to make a prospective election change to cancel or reduce coverage of that employee, spouse, or dependent under the accident or health plan. In addition, if an employee, spouse, or dependent who has been entitled to such coverage under Medicare or Medicaid loses eligibility for such coverage, the cafeteria plan may permit the employee to make a prospective election to commence or increase coverage of that employee, spouse, or dependent under the accident or health plan.

(f) *Significant cost or coverage changes*—(1) *In general*. Paragraphs (f)(2) through (5) of this section set forth rules for election changes as a result of changes in cost or coverage. This paragraph (f) does not apply to an election change with respect to a health FSA (or on account of a change in cost or coverage under a health FSA).

(2) *Cost changes*—(i) *Automatic changes*. If the cost of a qualified benefits plan increases (or decreases) during a period of coverage and, under the terms of the plan, employees are required to make a corresponding change in their payments, the cafeteria plan may, on a reasonable and consistent basis, automatically make a prospective increase (or decrease) in affected employees' elective contributions for the plan.

(ii) *Significant cost changes*. If the cost charged to an employee for a benefit package option (as defined in paragraph (i)(2) of this section) significantly increases or significantly decreases during a period of coverage, the cafeteria plan may permit the employee to make a corresponding change in election under the cafeteria plan. Changes that may be made include commencing participation in the cafeteria plan for the option with a decrease in cost, or, in the case of an increase in cost, revoking an election for that coverage and, in lieu thereof, either receiving on a prospective basis coverage under another benefit package option providing similar coverage or dropping coverage if no other benefit package option providing similar coverage is available. For example, if the cost of an indemnity option under an accident or health plan significantly increases during a period of coverage, employees who are covered by the indemnity option may make a corresponding prospective increase in their payments or may instead elect to revoke their election for the indemnity option and, in lieu thereof, elect coverage under another benefit package option including an HMO option (or drop coverage under the accident or health plan if no other benefit package option is offered).

(iii) *Application of cost changes*. For purposes of paragraphs (f)(2)(i) and (ii) of this section, a cost increase or decrease refers to an increase or decrease in the amount of the elective contributions under the cafeteria plan, whether that increase or decrease results from an action taken by the employee (such as switching between full-time and part-time status) or from an action taken by an employer (such as reducing the amount of employer contributions for a class of employees).

(iv) *Application to dependent care.* This paragraph (f)(2) applies in the case of a dependent care assistance plan only if the cost change is imposed by a dependent care provider who is not a relative of the employee. For this purpose, a relative is an individual who is related as described in section 152(a)(1) through (8), incorporating the rules of section 152(b)(1) and (2).

(3) *Coverage changes*—(i) *Significant curtailment without loss of coverage.* If an employee (or an employee's spouse or dependent) has a significant curtailment of coverage under a plan during a period of coverage that is not a loss of coverage as described in paragraph (f)(3)(ii) of this section (for example, there is a significant increase in the deductible, the copay, or the out-of-pocket cost sharing limit under an accident or health plan), the cafeteria plan may permit any employee who had been participating in the plan and receiving that coverage to revoke his or her election for that coverage and, in lieu thereof, to elect to receive on a prospective basis coverage under another benefit package option providing similar coverage. Coverage under a plan is significantly curtailed only if there is an overall reduction in coverage provided under the plan so as to constitute reduced coverage generally. Thus, in most cases, the loss of one particular physician in a network does not constitute a significant curtailment.

(ii) *Significant curtailment with loss of coverage.* If an employee (or the employee's spouse or dependent) has a significant curtailment that is a loss of coverage, the plan may permit that employee to revoke his or her election under the cafeteria plan and, in lieu thereof, to elect either to receive on a prospective basis coverage under another benefit package option providing similar coverage or to drop coverage if no similar benefit package option is available. For purposes of this paragraph (f)(3)(ii), a loss of coverage means a complete loss of coverage under the benefit package option or other coverage option (including the elimination of a benefits package option, an HMO ceasing to be available in the area where the individual resides, or the individual losing all coverage under the option by reason of an overall lifetime or annual limitation). In addition, the cafeteria plan may, in its discretion, treat the following as a loss of coverage—

(A) A substantial decrease in the medical care providers available under the option (such as a major hospital ceasing to be a member of a preferred provider network or a substantial decrease in the physicians participating in a preferred provider network or an HMO);

(B) A reduction in the benefits for a specific type of medical condition or treatment with respect to which the employee or the employee's spouse or dependent is currently in a course of treatment; or

(C) Any other similar fundamental loss of coverage.

(iii) *Addition or improvement of a benefit package option.* If a plan adds a new benefit package option or other coverage option, or if coverage under an existing benefit package option or other coverage option is significantly improved during a period of coverage, the cafeteria plan may permit eligible employees (whether or not they have previously made an election under the cafeteria plan or have previously elected the benefit package option) to revoke their election under the cafeteria plan and, in lieu thereof, to make an election on a prospective basis for coverage under the new or improved benefit package option.

(4) *Change in coverage under another employer plan.* A cafeteria plan may permit an employee to make a prospective election change that is on account of and corresponds with a change made under another employer plan (including a plan of the same employer or of another employer) if—

(i) The other cafeteria plan or qualified benefits plan permits participants to make an election change that would be permitted under paragraphs (b) through (g) of this section (disregarding this paragraph (f)(4)); or

(ii) The cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the other cafeteria plan or qualified benefits plan.

(5) *Loss of coverage under other group health coverage.* A cafeteria plan may permit an employee to make an election on a prospective basis to add coverage under a cafeteria plan for the employee, spouse, or dependent if the employee, spouse, or dependent loses coverage under any group health coverage sponsored by a governmental or educational institution, including the following—

(i) A State's children's health insurance program (SCHIP) under title XXI of the Social Security Act;

(ii) A medical care program of an Indian Tribal government (as defined in section 7701(a)(40)), the Indian Health Service, or a tribal organization;

(iii) A State health benefits risk pool; or

(iv) A Foreign government group health plan.

(6) *Examples.* The following examples illustrate the application of this paragraph (f):

*Example 1.* (i) A calendar year cafeteria plan is maintained pursuant to a collective bargaining agreement for the benefit of Employer *M*'s employees. The cafeteria plan offers various benefits, including indemnity health insurance and a health FSA. As a result of mid-year negotiations, premiums for the indemnity health insurance are reduced in the middle of the year, insurance co-payments for office visits are reduced under the indemnity plan by an amount which constitutes a significant benefit improvement, and an HMO option is added.

(ii) Under these facts, the reduction in health insurance premiums is a reduction in cost. Accordingly, under paragraph (f)(2)(i) of this section, the cafeteria plan may automatically decrease the amount of salary reduction contributions of affected participants by an amount that corresponds to the premium change. However, the plan may not permit employees to change their health FSA elections to reflect the mid-year change in copayments under the indemnity plan.

(iii) Also, the decrease in co-payments is a significant benefit improvement and the addition of the HMO option is an addition of a benefit package option. Accordingly, under paragraph (f)(3)(ii) of this section, the cafeteria plan may permit eligible employees to make an election change to elect the indemnity plan or the new HMO option. However, the plan may not permit employees to change their health FSA elections to reflect differences in co-payments under the HMO option.

*Example 2.* (i) Employer *N* sponsors an accident or health plan under which employees may elect either employee-only coverage or family health coverage. The 12-month period of coverage under *N*'s cafeteria plan begins January 1, 2001. *N*'s employee, *A*, is married to *B*. Employee *A* elects employee-only coverage under *N*'s plan. *B*'s employer, *O*, offers health coverage to *O*'s employees under its accident or health plan under which employees may elect either employee-only coverage or family coverage. *O*'s plan has a 12-month period of coverage beginning September 1, 2001. *B* maintains individual coverage under *O*'s plan at the time *A* elects coverage under *N*'s plan, and wants to elect no coverage for the plan year beginning on September 1, 2001, which is the next period of coverage under *O*'s accident or health plan. *A* certifies to *N* that *B* will elect no coverage under *O*'s accident or health plan for the plan year beginning on September 1, 2001 and *N* has no reason to believe that *A*'s certification is incorrect.

(ii) Under paragraph (f)(4)(ii) of this section, *N*'s cafeteria plan may permit *A* to change *A*'s election prospectively to family coverage under that plan effective September 1, 2001.

*Example 3.* (i) Employer *P* sponsors a calendar year cafeteria plan under which employees may elect either employee-only or family health coverage. Before the beginning of the year, *P*'s employee, *C*, elects family coverage under *P*'s cafeteria plan. *C* also elects coverage under the health FSA for up to $200 of reimbursements for the year to be funded by salary reduction contributions of $200 during the year. *C* is married to *D*, who is employed by Employer *Q*. *Q* does not maintain a cafeteria plan, but does maintain an accident or health plan providing its employees with employee-only coverage. During the calendar year, *Q* adds family coverage as an option under its health plan. *D* elects family coverage under *Q*'s plan, and *C* wants to revoke *C*'s election for health coverage and elect no health coverage under *P*'s cafeteria plan for the remainder of the year.

(ii) *Q*'s addition of family coverage as an option under its health plan constitutes a new coverage option described in paragraph (f)(3)(ii) of this section. Accordingly, pursuant to paragraph (f)(4)(i) of this section, *P*'s cafeteria plan may permit *C* to revoke *C*'s health coverage election if *D* actually elects family health coverage under *Q*'s accident or health plan. Employer *P*'s plan may not permit *C* to change *C*'s health FSA election.

*Example 4*. (i) Employer *R* maintains a cafeteria plan under which employees may elect accident or health coverage under either an indemnity plan or an HMO. Before the beginning of the year, *R*'s employee, *E* elects coverage under the HMO at a premium cost of $100 per month. During the year, *E* decides to switch to the indemnity plan, which charges a premium of $140 per month.

(ii) *E*'s change from the HMO to indemnity plan is not a change in cost or coverage under this paragraph (f), and none of the other election change rules under paragraphs (b) through (e) of this section apply.

(iii) Although *R*'s health plan may permit *E* to make the change from the HMO to the indemnity plan, *R*'s cafeteria plan may not permit *E* to make an election change to reflect the increased premium. Accordingly, if *E* switches from the HMO to the indemnity plan, *E* may pay the $40 per month additional cost on an after-tax basis.

*Example 5*. (i) Employee *A* is married to Employee *B* and they have one child, *C*. Employee *A*'s employer, *M*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *C* attends *X*'s on site child care center at an annual cost of $3,000. Prior to the beginning of the year, *A* elects salary reduction contributions of $3,000 during the year to fund coverage under the dependent care FSA for up to $3,000 of reimbursements for the year. Employee *A* now wants to revoke *A*'s election of coverage under the dependent care FSA, because *A* has found a new child care provider.

(ii) The availability of dependent care services from the new child care provider (whether the new provider is a household employee or family member of *A* or *B* or a person who is independent of *A* and *B*) is a significant change in coverage similar to a benefit package option becoming available. Because the FSA is a dependent care FSA rather than a health FSA, the coverage rules of this section apply and *M*'s cafeteria plan may permit *A* to elect to revoke *A*'s previous election of coverage under the dependent care FSA, and make a corresponding new election to reflect the cost of the new child care provider.

*Example 6*. (i) Employee *D* is married to Employee *E* and they have one child, *F*. Employee *D*'s employer, *N*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *F* is cared for by *Y*, *D*'s household employee, who provides child care services five days a week from 9 a.m. to 6 p.m. at an annual cost in excess of $5,000. Prior to the beginning of the year, *D* elects salary reduction contributions of $5,000 during the year to fund coverage under the dependent care FSA for up to $5,000 of reimbursements for the year. During the year, *F* begins school and, as a result, *Y*'s regular hours of work are changed to five days a week from 3 p.m. to 6 p.m. Employee *D* now wants to revoke *D*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual cost of $4,000 to reflect a reduced cost of child care due to *Y*'s reduced hours.

(ii) The change in the number of hours of work performed by *Y* is a change in coverage. Thus, *N*'s cafeteria plan may permit *D* to reduce *D*'s previous election under the dependent care FSA to $4,000.

*Example 7*. (i) Employee *G* is married to Employee *H* and they have one child, *J*. Employee *G*'s employer, *O*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *J* is cared for by *Z*, *G*'s household employee, who is not a relative of *G* and who provides child care services at an annual cost of $4,000. Prior to the beginning of the year, *G* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *G* raises *Z*'s salary. Employee *G* now wants to revoke *G*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual amount of $4,500 to reflect the raise.

(ii) The raise in *Z*'s salary is a significant increase in cost under paragraph (f)(2)(ii) of this section, and an increase in election to reflect the raise corresponds with that change in status. Thus, *O*'s cafeteria plan may permit *G* to elect to increase *G*'s election under the dependent care FSA.

*Example 8*. (i) Employer *P* maintains a calendar year cafeteria plan that allows employees to elect employee-only, employee plus one dependent, or family coverage under an indemnity plan. During the middle of the year, Employer *P* gives its employees the option to select employee-only or family coverage from an HMO plan. *P*'s employee, *J*, who had elected employee plus one dependent coverage under the indemnity plan, decides to switch to family coverage under the HMO plan.

(ii) Employer *P*'s midyear addition of the HMO option is an addition of a benefit package option. Under paragraph (f) of this section, Employee *J* may change his or her salary reduction contributions to reflect the change from indemnity to HMO coverage, and also to reflect the change from employee plus one dependent to family coverage (however, an election of employee-only coverage under the new option would not correspond with the addition of a new option). Employer *P* may not permit *J* to change *J*'s health FSA election.

(g) *Special requirements relating to the Family and Medical Leave Act*. An employee taking leave under the Family and Medical Leave Act (FMLA) (Public Law 103–3 (107 Stat. 6)) may revoke an existing election of accident or health plan coverage and make such other election for the remaining portion of the period of coverage as may be provided for under the FMLA. See §1.125–3 for additional rules.

(h) *Elective contributions under a qualified cash or deferred arrangement.* The provisions of this section do not apply with respect to elective contributions under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or employee contributions subject to section 401(m). Thus, a cafeteria plan may permit an employee to modify or revoke elections in accordance with section 401(k) and (m) and the regulations thereunder.

(i) *Definitions.* Unless otherwise provided, the definitions in paragraphs (i)(1) though (8) of this section apply for purposes of this section.

(1) *Accident or health coverage.* Accident or health coverage means coverage under an accident or health plan as defined in regulations under section 105.

(2) *Benefit package option.* A benefit package option means a qualified benefit under section 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as an indemnity option, an HMO option, or a PPO option under an accident or health plan).

(3) *Dependent.* A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section 152(e) applies is treated as a dependent of both parents, and, for purposes of dependent care assistance provided through a cafeteria plan, a dependent means a qualifying individual (as defined in section 21(b)(1)) with respect to the employee.

(4) *Disability coverage.* Disability coverage means coverage under an accident or health plan that provides benefits due to personal injury or sickness, but does not reimburse expenses incurred for medical care (as defined in section 213(d)) of the employee or the employee's spouse and dependents. For purposes of this section, disability coverage includes payments described in section 105(c).

(5) *Family member plan.* A family member plan means a cafeteria plan or qualified benefit plan sponsored by the employer of the employee's spouse or the employee's dependent.

(6) *FSA, health FSA.* An FSA means a qualified benefits plan that is a flexible spending arrangement as defined in section 106(c)(2) . A health FSA means a health or accident plan that is an FSA.

(7) *Placement for adoption.* Placement for adoption means placement for adoption as defined in regulations under section 9801.

(8) *Qualified benefits plan.* A qualified benefits plan means an employee benefit plan governing the provision of one or more benefits that are qualified benefits under section 125(f). A plan does not fail to be a qualified benefits plan merely because it includes an FSA, assuming that the FSA meets the requirements of section 125 and the regulations thereunder.

(9) *Similar coverage.* Coverage for the same category of benefits for the same individuals (e.g., family to family or single to single). For example, two plans that provide coverage for major medical are considered to be similar coverage. For purposes of this definition, a health FSA is not similar coverage with respect to an accident or health plan that is not a health FSA. A plan may treat coverage by another employer, such as a spouse's or dependent's employer, as similar coverage.

(j) *Effective date*—(1) *General rule.* Except as provided in paragraph (j)(2) of this section, this section is applicable for cafeteria plan years beginning on or after January 1, 2001.

(2) *Delayed effective date for certain provisions.* The following provisions are applicable for cafeteria plan years beginning on or after January 1, 2002: paragraph (c) of this section to the extent applicable to qualified benefits other than an accident or health plan or a group-term life insurance plan; paragraph (d)(1)(ii)(B) of this section (relating to a spouse, former spouse, or other individual obtaining accident or health coverage for an employee's child in response to a judgment, decree, or order); paragraph (f) of this section (rules for election changes as a result

of cost or coverage changes); and paragraph (i)(9) of this section (defining similar coverage).

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### § 1.125–4T Permitted election changes (temporary).

(a) *Election changes.* A cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in paragraphs (b) through (i) of this section. See paragraph (j) of this section for special provisions relating to qualified cash or deferred arrangements.

(b) *Special enrollment rights.* A cafeteria plan may permit an employee to revoke an election for accident or health coverage during a period of coverage and make a new election that corresponds with the special enrollment rights provided in section 9801(f), whether or not the change in election is permitted under paragraph (c) of this section.

(c) *Changes in status for accident or health coverage and group-term life*—(1) *In general.* A cafeteria plan may permit an employee to revoke an election for accident or health coverage or group-term life insurance coverage during a period of coverage and make a new election for the remaining portion of the period if, under the facts and circumstances—

(i) A change in status occurs; and

(ii) The election change satisfies the consistency requirement in paragraph (c)(3) of this section (consistency rule for accident or health coverage) or (c)(4) of this section (consistency rule for group-term life insurance coverage).

(2) *Change in status events.* The following events are changes in status for purposes of this paragraph (c):

(i) *Legal marital status.* Events that change an employee's legal marital status, including marriage, death of spouse, divorce, legal separation, or annulment;

(ii) *Number of dependents.* Events that change an employee's number of dependents (as defined in section 152), including birth, adoption, placement for adoption (as defined in regulations under section 9801), or death of a dependent;

(iii) *Employment status.* A termination or commencement of employment by the employee, spouse, or dependent;

(iv) *Work schedule.* A reduction or increase in hours of employment by the employee, spouse, or dependent, including a switch between part-time and full-time, a strike or lockout, or commencement or return from an unpaid leave of absence;

(v) *Dependent satisfies or ceases to satisfy the requirements for unmarried dependents.* An event that causes an employee's dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance as provided in the accident or health plan under which the employee receives coverage; and

(vi) *Residence or Worksite.* A change in the place of residence or work of the employee, spouse, or dependent.

(3) *Consistency rule for accident or health coverage.* (i) *General rule.* (A) An employee's revocation of a cafeteria plan election during a period of coverage and new election for the remaining portion of the period (referred to below as an ''election change'') is consistent with a change in status if, and only if—

(*1*) The change in status results in the employee, spouse, or dependent gaining or losing eligibility for accident or health coverage under either the cafeteria plan or an accident or health plan of the spouse's or dependent's employer; and

(*2*) The election change corresponds with that gain or loss of coverage.

(B) A change in status results in an employee, spouse, or dependent gaining (or losing) eligibility for coverage under a plan only if the individual becomes eligible (or ineligible) to participate in the plan. A cafeteria plan may treat an individual as gaining (or losing) eligibility for coverage if the individual becomes eligible (or ineligible) for a particular benefit package option under a plan (e.g., a change in status results in an individual becoming eligible for a managed care option or an indemnity option). If, as a result of a change in status, the individual gains eligibility for elective coverage under a plan of the spouse's or dependent's employer, the consistency rule of this paragraph (c)(3)(i) is satisfied only if the individual elects the coverage under the spouse's or dependent's employer. See the *Examples* in paragraph (k) of this section for illustrations of the consistency rule.

(ii) *Exception for COBRA.* Notwithstanding paragraph (c)(3)(i) of this section, if the employee, spouse, or dependent becomes eligible for continuation coverage under the employer's group health plan as provided in section 4980B or any similar State law, the employee may elect to increase payments under the employer's cafeteria plan in order to pay for the continuation coverage.

(4) *Consistency rule for group-term life insurance coverage.* Except as provided in this paragraph (c)(4), the provisions of paragraph (c)(3)(i) of this section apply to group-term life insurance coverage. In the case of marriage, birth, adoption, or placement for adoption, a cafeteria plan can allow an election change to increase (but not to reduce) the amount of the employee's life insurance coverage. In the case of divorce, legal separation, annulment, or death of a spouse or dependent, a cafeteria plan may allow an election change to reduce (but not to increase) the amount of the employee's life insurance coverage.

(d) *Judgment, decree, or order.* This paragraph (d) applies to a judgment, decree, or order (''order'') resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order defined in section 609 of the Employee Retirement Income Security Act of 1974) that requires accident or health coverage for an employee's child. Notwithstanding the provisions of paragraph (c) of this section, a cafeteria plan may—

(1) Change the employee's election to provide coverage for the child if the order requires coverage under the employee's plan; or

(2) Permit the employee to make an election change to cancel coverage for the child if the order requires the former spouse to provide coverage.

(e) *Entitlement to Medicare or Medicaid.* If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (*i.e.*, enrolled) under Part A or Part B of title XVIII of the Social Security Act (Medicare) or title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), a cafeteria plan may permit the employee to make an election change to cancel coverage of that employee, spouse or dependent under the accident or health plan.

(f) *Changes in status for other qualified benefits.* [Reserved]

(g) *Significant coverage or cost changes.* [Reserved]

(1) *Employer's plan.* [Reserved]

(2) *Plan of spouse's or dependent's employer.* [Reserved]

(h) *Cessation of required contributions.* [Reserved]

(i) *Special requirements concerning the Family and Medical Leave Act.* [Reserved]

(j) *Elective contributions under a qualified cash or deferred arrangement.* The provisions of this section do not apply with respect to elective contributions under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or employee contributions subject to section 401(m). Thus, a cafeteria plan may permit an employee to modify or revoke elections in accordance with sections 401(k) and 401(m) and the regulations thereunder.

(k) *Examples.* The following examples illustrate the rules of this section. In each case involving an accident or health plan, assume that the plan is subject to section 9801(f) (providing for special enrollment rights under certain group health plans).

*Example 1.* (i) Employer M provides health coverage for its employees under which employees may elect either employee-only coverage or family coverage. M also maintains a calendar year cafeteria plan under which qualified benefits, including health coverage, are funded through salary reduction. M's employee, A, elects employee-only health coverage before the beginning of the calendar year. During the year, A adopts a child, C. Within 30 days thereafter, A wants to revoke

A's election for employee-only health coverage and obtain family health coverage, as of the date of C's adoption. A satisfies the conditions for special enrollment of an employee with a new dependent under section 9801(f)(2), so that A may enroll in family coverage under M's accident or health plan in order to provide coverage for C, effective as of the date of C's adoption.

(ii) In this *Example 1*, M's cafeteria plan may permit A to change the employee's salary reduction election to family coverage for salary not yet currently available. The increased salary reduction could reflect the cost of family coverage from the date of adoption. (The adoption of C is also a change in status, and the election of family coverage is consistent with that change in status. Thus, under the change in status provisions of paragraph (c) of this section, M's cafeteria plan could permit A to elect family coverage prospectively in order to cover C for the remaining portion of the coverage period.)

*Example 2*. (i) The employer plans and permissible coverage are the same as in *Example 1*. Before the beginning of the calendar year, Employee A elects employee-only health coverage under M's cafeteria plan. A marries B during the plan year. B's employer, N, offers health coverage to N's employees, and, prior to the marriage, B had elected employee-only coverage. A wants to revoke the election for employee-only coverage, and is considering electing family health coverage under M's plan or obtaining family health coverage under N's plan.

(ii) In this *Example 2*, A's marriage to B is a change in status. Two possible election changes by A would be consistent with the change in status: to cover A and B by electing family health coverage under M's plan, or to cancel coverage under M's plan (with B electing family health coverage under N's plan in order to cover A and B). Thus, M's cafeteria plan may permit A to make either change in election. (M's cafeteria plan could also permit A to change A's salary reduction election to reflect the change to family coverage under M's group health plan in accordance with paragraph (b) of this section because the marriage would also create special enrollment rights under section 9801(f), pursuant to which an election of family coverage under M's plan would be required to be effective no later than the first day of the first calendar month beginning after the completed request for enrollment is received by the plan.)

*Example 3*. (i) Employee G, a single parent, elects family health coverage under a calendar year cafeteria plan maintained by Employer O. G and G's 21-year old child, H, are covered under O's health plan. During the year, H graduates from college. Under the terms of the health plan, dependents over the age of 19 must be full-time students to receive coverage. G wants to revoke G's election for family health coverage and obtain employee-only coverage under O's cafeteria plan.

(ii) In this *Example 3*, H's loss of eligibility for coverage under the terms of the health plan is a change in status. A revocation of G's election for family coverage and new election of employee-only coverage is consistent with the change in status. Thus, O's cafeteria plan may permit G to elect employee-only coverage.

*Example 4*. (i) Employee J is married to K and they have one child, S. A calendar year cafeteria plan maintained by Employer P allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. Under the plan, before the beginning of the calendar year, J elects family health coverage for J, K, and S. J and K divorce during the year and, under the terms of P's accident or health plan, K loses eligibility for P's health coverage. S does not lose eligibility for health coverage under P's plan upon the divorce. J now wants to revoke J's election under the cafeteria plan and elect no coverage.

(ii) In this *Example 4*, the divorce is a change in status. A change in the cafeteria plan election to cancel health coverage for K is consistent with that change in status. However, the divorce does not affect J's or S's eligibility for health coverage. Therefore, an election change to cancel J's or S's health coverage is not consistent with the change in status. The cafeteria plan, however, may permit J to elect employee-plus-one-dependent health coverage.

*Example 5*. (i) The facts are the same as *Example 4*, except that, before the beginning of the year, Employee J elected employee-only health coverage (rather than family coverage). Pursuant to J's divorce agreement with K, P's health plan receives a qualified medical child support order (as defined in section 609 of the Employee Retirement Income Security Act) during the plan year. The order requires P's health plan to cover S.

(ii) In this *Example 5*, P's cafeteria plan may change J's election from employee-only health coverage to employee-plus-one-dependent coverage in order to cover S.

*Example 6*. (i) Before the beginning of the coverage period, Employee L elects to participate in a cafeteria plan maintained by L's Employer, Q. However, in order to change the election during the coverage period so as to cancel coverage, and by prior understanding with Q, L terminates employment and resumes employment one week later.

(ii) In this *Example 6*, under the facts and circumstances, in which a principal purpose of the termination of employment was to alter the election and reinstatement of employment was understood at the time of termination, L does not have a change in status. However, L's termination of employment would constitute a change in status, permitting a cancellation of coverage during the period of unemployment, if L's original cafeteria plan election was reinstated upon resumption of employment (for example, because of a cafeteria plan provision requiring an employee who resumes employment within 30 days, without any other intervening event that would permit a change in election, to return to the election in effect prior to termination of employment).

*Example 7*. (i) Employer R maintains a calendar year cafeteria plan under which full-time employees may elect coverage under one of three benefit package options provided under an accident or health plan: an indemnity option or either of two HMO options for employees that work in the respective service areas of the two HMOs. Employee T, who works in the service area of HMO #1, elects the HMO #1 option. During the year, T is transferred to another work location which is outside the HMO #1 service area and inside the HMO #2 service area.

(ii) In this *Example 7*, the transfer is a change in status and, under the consistency rule, the cafeteria plan may permit T to make an election change to either the indemnity option or HMO #2, or to cancel accident or health coverage.

*Example 8*. (i) A calendar year cafeteria plan maintained by Employer S allows employees to elect coverage under an accident or health plan providing indemnity coverage and under a flexible spending arrangement (FSA). Prior to the beginning of the calendar year, Employee U elects employee-only indemnity coverage, and coverage under the FSA for up to $600 of reimbursements for the year to be funded by salary reduction contributions of $600 during the year. U's spouse, V, has employee-only coverage under an accident or health plan maintained by V's employer. During the year, V terminates employment and loses coverage under that plan. U now wants to elect family coverage under S's accident or health plan and increase U's FSA election.

(ii) In this *Example 8*, V's termination of employment is a change in status. The cafeteria plan may permit U to elect family coverage under S's accident or health plan, and to increase U's FSA coverage.

*Example 9*. (i) Employer T provides group-term life insurance coverage as described under section 79. Under T's plan, an employee may elect life insurance coverage in an amount up to the lesser of his or her salary or $50,000. T also maintains a calendar year cafeteria plan under which qualified benefits, including the group-term life insurance coverage, are funded through salary reduction. Before the beginning of the calendar year, Employee W elects $10,000 of life insurance coverage, with W's spouse, X, as the beneficiary. During the year, a child is placed for adoption with W and X. W wants to increase W's election for life insurance coverage to $50,000 (without changing the designation of X as the beneficiary).

(ii) In this *Example 9*, the placement of a child for adoption with W is a change in status. The increase in coverage is consistent with the change in status. Thus, W's cafeteria plan may permit W to increase W's life insurance coverage.

(l) *Effective date*. This section is applicable for plan years beginning after December 31, 1998, and on or before November 6, 2000.

[T.D. 8738, 62 FR 60166, Nov. 7, 1997; 63 FR 8528, Feb. 19, 1998; T.D. 8878, 65 FR 15553, Mar. 23, 2000]

## § 1.127–1 Amounts received under a qualified educational assistance program.

(a) *Exclusion from gross income*. The gross income of an employee does not include—

(1) Amounts paid to, or on behalf of the employee under a qualified educational assistance program described in § 1.127–2, or

(2) The value of education provided to the employee under such a program.

(b) *Disallowance of excluded amounts as credit or deduction*. Any amount excluded from the gross income of an employee under paragraph (a) of this section shall not be allowed as a credit or deduction to such employee under any other provision of this part.

(c) *Amounts received under a nonqualified program*. Any amount received under an educational assistance program that is not a ''qualified program'' described in § 1.127–2 will not be excluded from gross income under paragraph (a) of this section. All or part of the amounts received under such a nonqualified program may, however, be excluded under section 117 or deducted under section 162 or section 212 (as the case may be), if the requirements of such section are satisfied.

(d) *Definitions*. For rules relating to the meaning of the terms ''employee'' and ''employer'', see paragraph (h) of § 1.127–2.

(e) *Effective date.* This section is effective for taxable years of the employee beginning after December 31, 1978, and before January 1, 1984.

[T.D. 7898, 48 FR 31017, July 6, 1983]

### § 1.127–2 Qualified educational assistance program.

(a) *In general.* A qualified educational assistance program is a plan established and maintained by an employer under which the employer provides educational assistance to employees. To be a qualified program, the requirements described in paragraphs (b) through (g) of this section must be satisfied. It is not required that a program be funded or that the employer apply to the Internal Revenue Service for a determination that the plan is a qualified program. However, under § 601.201 (relating to rulings and determination letters), an employer may request that the Service determine whether a plan is a qualified program.

(b) *Separate written plan.* The program must be a separate written plan of the employer. This requirement means that the terms of the program must be set forth in a separate document or documents providing only educational assistance within the meaning of paragraph (c) of this section. The requirement for a separate plan does not, however, preclude an educational assistance program from being part of a more comprehensive employer plan that provides a choice of nontaxable benefits to employees.

(c) *Educational assistance*—(1) *In general.* The benefits provided under the program must consist solely of educational assistance. The term ''educational assistance'' means—

(i) The employer's payment of expenses incurred by or on behalf of an employee for education, or

(ii) The employer's provision of education to an employee.

(2) *Alternative benefits.* Benefits will not be considered to consist solely of educational assistance if the program, in form or in actual operation, provides employees with a choice between educational assistance and other remuneration includible in the employee's gross income.

(3) *Certain benefits not considered educational assistance.* The term ''educational assistance'' does not include the employer's payment for, or provision of—

(i) Tools or supplies (other than textbooks) that the employee may retain after completing a course of instruction,

(ii) Meals, lodging, or transportation, or

(iii) Education involving sports, games, or hobbies, unless such education involves the business of the employer or is required as part of a degree program. The phrase ''sports, games, or hobbies'' does not include education that instructs employees how to maintain and improve health so long as such education does not involve the use of athletic facilities or equipment and is not recreational in nature.

(4) *Education defined.* As used in section 127, § 1.127–1, and this section, the term ''education'' includes any form of instruction or training that improves or develops the capabilities of an individual. Education paid for or provided under a qualified program may be furnished directly by the employer, either alone or in conjunction with other employers, or through a third party such as an educational institution. Education is not limited to courses that are job related or part of a degree program.

(d) *Exclusive benefit.* The program may benefit only the employees of the employer, including, at the employer's option, individuals who are employees within the meaning of paragraph (h)(1) of this section. A program that provides benefits to spouses or dependents of employees is not a qualified program within the meaning of this section.

(e) *Prohibited discrimination*—(1) *Eligibility for benefits.* The program must benefit the employer's employees generally. Among those benefited may be employees who are officers, shareholders, self-employed or highly compensated. A program is not for the benefit of employees generally, however, if the program discriminates in favor of employees described in the preceding sentence (or in favor of their spouses and dependents who are themselves employees) in requirements relating to eligibility for benefits. Thus, although a program need not provide benefits for all employees, it must benefit those employees who qualify under a classification of employees that does not discriminate in favor of the employees with respect to whom discrimination is prohibited. The classification of employees to be considered benefited will consist of that group of employees who are actually eligible for educational assistance under the program, taking into account the eligibility requirements set forth in the written plan, the eligibility requirements reflected in the types of educational assistance available under the program, and any other conditions that may affect the availability of benefits under the program. Thus, for example, if an employer's plan provides that all employees are eligible for educational assistance, yet limits that assistance to courses of study leading to postgraduate degrees in fields relating to the employer's business, then only those employees able to pursue such a course of study are considered actually eligible for educational assistance under the program. Whether any classification of employees discriminates in favor of employees with respect to whom discrimination is prohibited will generally be determined by applying the same standards as are applied under section 410(b)(1)(B) (relating to qualified pension, profit-sharing and stock bonus plans), without regard to section 401(a)(5). For purposes of making this determination, there shall be excluded from consideration employees not covered by the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if the Internal Revenue Service finds that educational assistance benefits were the subject of good faith bargaining between the employee representatives and the employer or employers. For purposes of determining whether such bargaining occurred, it is not material that the employees are not covered by another educational assistance program or that the employer's present program was not considered in the bargaining.

(2) *Factors not considered in determining the existence of prohibited discrimination.* A program shall not be considered discriminatory under this paragraph (e) merely because—

(i) Different types of educational assistance available under the program are utilized to a greater degree by employees with respect to whom discrimination is prohibited than by other employees, or

(ii) With respect to a course of study for which benefits are otherwise available, successful completion of the course, attaining a particular course grade, or satisfying a reasonable condition subsequent (such as remaining employed for one year after completing the course) are required or considered in determining the availability of benefits.

(f) *Benefit limitation*—(1) *In general.* Under section 127(b)(3), a program is a qualified program for a program year only if no more than 5% of the amounts paid or incurred by the employer for educational assistance benefits during the year are provided to the limitation class described in subparagraph (2). For purposes of this paragraph (f), the program year must be specified in the written plan as either the calendar year or the taxable year of the employer.

(2) *Limitation class.* The limitation class consists of—

(i) *Shareholders.* Individuals who, on any day of the program year, own more than 5% of the total number of shares of outstanding stock of the employer, or

(ii) *Owners.* In the case of an employer's trade or business which is not incorporated, individuals who, on any day of the program year, own more than 5% of the capital or profits interest in the employer, and

(iii) *Spouses or dependents.* Individuals who are spouses or dependents of shareholders or owners described in subdivision (i) or (ii). For purposes of determining stock ownership, the attribution rules described in paragraph (h)(4) of this section apply. The regulations prescribed under section 414(c) are applicable in determining an individual's interest in the capital or profits of an unincorporated trade or business.

(g) *Notification of employees.* A program is not a qualified program unless employees eligible to participate in the program are given reasonable notice of the terms and availability of the program.

(h) *Definitions*. For purposes of this section and §1.127–1—

(1) *Employee*. The term ''employee'' includes—

(i) A retired, disabled or laid-off employee,

(ii) A present employee who is on leave, as, for example, in the Armed Forces of the United States, or

(iii) An individual who is self-employed within the meaning of section 401(c)(1).

(2) *Employer*. An individual who owns the entire interest in an unincorporated trade or business shall be treated as his or her own employer. A partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1).

(3) *Officer*. An officer is an individual who is an officer within the meaning of regulations prescribed under section 414(c).

(4) *Shareholder*. The term ''shareholder'' includes an individual who is a shareholder as determined by the attribution rules under section 1563 (d) and (e), without regard to section 1563(e)(3)(C).

(5) *Highly compensated*. The term ''highly compensated'' has the same meaning as it does for purposes of section 410(b)(1)(B).

(i) *Substantiation*. An employee receiving payments under a qualified educational assistance program must be prepared to provide substantiation to the employer such that it is reasonable to believe that payments or reimbursements made under the program constitute educational assistance within the meaning of paragraph (c) of this section.

[T.D. 7898, 48 FR 31017, July 6, 1983]

### § 1.132–0 Outline of regulations under section 132.

The following is an outline of regulations in this section relating to exclusions from gross income for certain fringe benefits:

*§ 1.132–0 Outline of regulations under section 132.*

*§ 1.132–1 Exclusion from gross income for certain fringe benefits.*

§ 1.132–1 (a) In general.

§ 1.132–1 (b) Definition of employee.

(1) No-additional-cost services and qualified employee discounts.

(2) Working condition fringes.

(3) On-premises athletic facilities.

(4) De minimis fringes.

(5) Dependent child.

§ 1.132–1 (c) Special rules for employers—Effect of section 414.

§ 1.132–1 (d) Customers not to include employees.

§ 1.132–1 (e) Treatment of on-premises athletic facilities.

(1) In general.

(2) Premises of the employer.

(3) Application of rules to membership in an athletic facility.

(4) Operation by the employer.

(5) Nonapplicability of nondiscrimination rules.

§ 1.132–1 (f) Nonapplicability of section 132 in certain cases.

(1) Tax treatment provided for in another section.

(2) Limited statutory exclusions.

§ 1.132–1 (g) Effective date.

*§ 1.132–2 No-additional-cost services.*

§ 1.132–2 (a) In general.

(1) Definition.

(2) Excess capacity services.

(3) Cash rebates.

(4) Applicability of nondiscrimination rules.

(5) No substantial additional cost.

(6) Payments for telephone service.

§ 1.132–2 (b) Reciprocal agreements.

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*§ 1.132–3 Qualified employee discounts.*

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(1) Definition.

(2) Qualified property or services.

(3) No reciprocal agreement exception.

(4) Property of services provided without charge, at a reduced price, or by rebates.

(5) Property or services provided directly by the employer or indirectly through a third party.

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(2) Price to customers.

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(1) In general.

(2) Line of business.

(3) Generally accepted accounting principles.

§ 1.132–3 (d) Treatment of leased sections of department stores.

(1) In general.

(2) Employees of the leased section.

§ 1.132–3 (e) Excess discounts.

*§ 1.132–4 Line of business limitation.*

§ 1.132–4 (a) In general.
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(2) Definition.
(3) Aggregation of two-digit classifications.
§ 1.132–4 (b) Grandfather rule for certain retail stores.
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§ 1.132–4 (d) Special rule for certain affiliates of commercial airlines.
(1) General rule.
(2) ''Airline affiliated group'' defined.
(3) ''Qualified affiliate'' defined.
§ 1.132–4 (e) Grandfather rule for affiliated groups operating airlines.
§ 1.132–4 (f) Special rule for qualified air transportation organizations.
§ 1.132–4 (g) Relaxation of line of business requirement.
§ 1.132–4 (h) Line of business requirement does not expand benefits eligible for exclusion.

*§ 1.132–5 Working condition fringes.*

§ 1.132–5 (a) In general.
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(2) Trade or business of the employee.
§ 1.132–5 (b) Vehicle allocation rules.
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(2) Use of different employer-provided vehicles.
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§ 1.132–5 (c) Applicability of substantiation requirements of sections 162 and 274(d).
(1) In general.
(2) Section 274(d) requirements.
§ 1.132–5 (d) Safe harbor substantiation rules.
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(2) Period for use of safe harbor rules.
§ 1.132–5 (e) Safe harbor substantiation rule for vehicles not used for personal purposes.
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(1) In general.
(2) Vehicles available to more than one individual.
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(2) Demonstration of bona fide business-oriented security concerns.
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*§ 1.132–6 De minimis fringes.*

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(1) Transit passes.
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(1) Benefits excludable from income.
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*§1.132–7 Employer-operated eating facilities.*

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*§1.132–8 Fringe benefit nondiscrimination rules.*

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(3) Scope of the nondiscrimination rules provided in this section.
§1.132–8 (b) Aggregation of Employees.
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[T.D. 8256, 54 FR 28600, July 6, 1989, as amended by T.D. 8457, 57 FR 62196, Dec. 30, 1992]

### § 1.132–1 Exclusion from gross income for certain fringe benefits.

(a) *In general.* Gross income does not include any fringe benefit which qualifies as a—

(1) No-additional-cost service,
(2) Qualified employee discount,
(3) Working condition fringe, or
(4) De minimis fringe.

Special rules apply with respect to certain on-premises gyms and other athletic facilities (§1.132–1(e)), demonstration use of employer-provided automobiles by full-time automobile salesmen (§1.132–5(o)), parking provided to an employee on or near the business premises of the employer (§1.132–5(p)), and on-premises eating facilities (§1.132–7).

(b) *Definition of employee*—(1) *No-additional-cost services and qualified employee discounts.* For purposes of section 132(a)(1) (relating to no-additonal-cost services) and section 132(a)(2) (relating to qualified employee discounts), the term ''employee'' (with respect to a line of business of an employer means—

(i) Any individual who is currently employed by the employer in the line of business,

(ii) Any individual who was formerly employed by the employer in the line of business and who separated from service with the employer in the line of business by reason of retirement or disability, and

(iii) Any widow or widower of an individual who died while employed by the employer in the line of business or who separated from service with the employer in the line of business by reason of retirement or disability.

For purposes of this paragraph (b)(1), any partner who performs services for a partnership is considered employed by the partnership. In addition, any use by the spouse or dependent child (as defined in paragraph (b)(5) of this section) of the employee will be treated as use by the employee. For purposes of section 132(a)(1) (relating to no-additional-cost services), any use of air transportation by a parent of an employee (determined without regard to section 132(f)(1)(B) and paragraph (b)(1)(iii) of this section) will be treated as use by the employee.

(2) *Working condition fringes.* For purposes of section 132(a)(3) (relating to working condition fringes), the term ''employee'' means—

(i) Any individual who is currently employed by the employer,

(ii) Any partner who performs services for the partnership,

(iii) Any director of the employer, and

(iv) Any independent contractor who performs services for the employer.

Notwithstanding anything in this paragraph (b)(2) to the contrary, an independent contractor who performs services for the employer cannot exclude the value of parking or the use of consumer goods provided pursuant to a product testing program under § 1.132–5(n); in addition, any director of the employer cannot exclude the value of the use of consumer goods provided pursuant to a product testing program under § 1.132–5(n).

(3) *On-premises athletic facilities.* For purposes of section 132(h)(5) (relating to on-premises athletic facilities), the term ''employee'' means—

(i) Any individual who is currently employed by the employer,

(ii) Any individual who was formerly employed by the employer and who separated from service with the employer by reason of retirement or disability, and

(iii) Any widow or widower of an individual who died while employed by the employer or who separated from service with the employer by reason of retirement or disability.

For purposes of this paragraph (b)(3), any partner who performs services for a partnership is considered employed by the partnership. In addition, any use by the spouse or dependent child (as defined in paragraph (b)(5) of this section) of the employee will be treated as use by the employee.

(4) *De minimis fringes.* For purposes of section 132(a)(4) (relating to de minimis fringes), the term ''employee'' means any recipient of a fringe benefit.

(5) *Dependent child.* The term ''dependent child'' means any son, stepson, daughter, or stepdaughter of the employee who is a dependent of the employee, or both of whose parents are deceased and who has not attained age 25. Any child to whom section 152(e) applies will be treated as the dependent of both parents.

(c) *Special rules for employers—Effect of section 414.* All employees treated as employed by a single employer under section 414 (b), (c), (m), or (o) will be treated as employed by a single employer for purposes of this section. Thus, employees of one corporation that is part of a controlled group of corporations may under certain circumstances be eligible to receive section 132 benefits from the other corporations that comprise the controlled group. However, the aggregation of employers described in this paragraph (c) does not change the other requirements for an exclusion, such as the line of business requirement. Thus, for example, if a controlled group of corporations consists of two corporations that operate in different lines of business, the corporations are not treated as operating in the same line of business even though the corporations are treated as one employer.

(d) *Customers not to include employees.* For purposes of section 132 and the regulations thereunder, the term ''customer'' means any customer who is not an employee. However, the preceding sentence does not apply to section 132(c)(2) (relating to the gross profit percentage for determining a qualified employee discount). Thus, an employer that provides employee discounts cannot exclude sales made to employees in determining the aggregate sales to customers.

(e) *Treatment of on-premises athletic facilities*—(1) *In general.* Gross income does not include the value of any on-premises athletic facility provided by an employer to its employees. For purposes of section 132(h)(5) and this paragraph (e), the term ''on-premises athletic facility'' means any gym or other athletic facility (such as a pool, tennis court, or golf course)—

(i) Which is located on the premises of the employer, (ii) Which is operated by the employer, and (iii) Substantially all of the use of which during the calendar year is by employees of the employer, their spouses, and their dependent children.

For purposes of paragraph (e) (1) (iii) of this section, the term ''dependent children'' has the same meaning as the plural of the term ''dependent child'' in paragraph (b)(5) of this section. The exclusion of this paragraph (e) does not apply to any athletic facility if access to the facility is made available to the general public through the sale of memberships, the rental of the facility, or a similar arrangement.

(2) *Premises of the employer.* The athletic facility need not be located on the

employer's business premises. However, the athletic facility must be located on premises of the employer. The exclusion provided in this paragraph (e) applies whether the premises are owned or leased by the employer; in addition, the exclusion is available even if the employer is not a named lessee on the lease so long as the employer pays reasonable rent. The exclusion provided in this paragraph (e) does not apply to any athletic facility that is a facility for residential use. Thus, for example, a resort with accompanying athletic facilities (such as tennis courts, pool, and gym) would not qualify for the exclusion provided in this paragraph (e). An athletic facility is considered to be located on the employer's premises if the facility is located on the premises of a voluntary employees' beneficiary association funded by the employer.

(3) *Application of rules to membership in an athletic facility*. The exclusion provided in this paragraph (e) does not apply to any membership in an athletic facility (including health clubs or country clubs) unless the facility is owned (or leased) and operated by the employer and substantially all the use of the facility is by employees of the employer, their spouses, and their dependent children. Therefore, membership in a health club or country club not meeting the rules provided in this paragraph (e) would not qualify for the exclusion.

(4) *Operation by the employer*. An employer is considered to operate the athletic facility if the employer operates the facility through its own employees, or if the employer contracts out to another to operate the athletic facility. For example, if an employer hires an independent contractor to operate the athletic facility for the employer's employees, the facility is considered to be operated by the employer. In addition, if an athletic facility is operated by more than one employer, it is considered to be operated by each employer. For purposes of paragraph (e) (1) (iii) of this section, substantially all of the use of a facility that is operated by more than one employer must be by employees of the various employers, their spouses, and their dependent children. Where the facility is operated by more than one employer, an employer that pays rent either directly to the owner of the premises or to a sublessor of the premises is eligible for the exclusion. If an athletic facility is operated by a voluntary employees' beneficiary association funded by an employer, the employer is considered to operate the facility.

(5) *Nonapplicability of nondiscrimination rules*. The nondiscrimination rules of section 132 and §1.132–8 do not apply to on-premises athletic facilities.

(f) *Nonapplicability of section 132 in certain cases*—(1) Tax treatment provided for in another section. If the tax treatment or a particular fringe benefit is expressly provided for in another section of Chapter 1 of the Internal Revenue Code of 1986, section 132 and the applicable regulations (except for section 132 (e) and the regulations thereunder) do not apply to such fringe benefit. For example, because section 129 provides an exclusion from gross income for amounts paid or incurred by an employer for dependent care assistance for an employee, the exclusions under section 132 and this section do not apply to the provision by an employer to an employee of dependent care assistance. Similarly, because section 117 (d) applies to tuition reductions, the exclusions under section 132 do not apply to free or discounted tuition provided to an employee by an organization operated by the employer, whether the tuition is for study at or below the graduate level. Of course, if the amounts paid by the employer are for education relating to the employee's trade or business of being an employee of the employer so that, if the employee paid for the education, the amount paid could be deducted under section 162, the costs of the education may be eligible for exclusion as a working condition fringe.

(2) *Limited statutory exclusions*. If another section of Chapter 1 of the Internal Revenue Code of 1986 provides an exclusion from gross income based on the cost of the benefit provided to the employee and such exclusion is a limited amount, section 132 and the regulations thereunder may apply to the extent the cost of the benefit exceeds the statutory exclusion.

(g) *Effective date*. Sections 1.132–0, 1.132–1, 1.132–2, 1.132–3, 1.132–4, 1.132–5, 1.132–6, 1.132–7 and 1.132–8 are effective as of January 1, 1989, except that §§1.132–1(b)(1) with respect to the use of air transportation by a parent of an employee and 1.132–4(d) are effective as of January 1, 1985. Furthermore, in §1.132–5, the eleventh sentence of paragraph (m)(1), *Examples 6* and *7* in paragraph (m)(8), and paragraphs (m)(2)(i), (m)(2)(v), (m)(3)(iv), (m)(6), (m)(7), and (r) are effective December 30, 1992; however, taxpayers may treat the rules as applicable to benefits provided on or after January 1, 1989. For the applicable rules relating to employer-provided transportation for security concerns prior to December 30, 1992, see §1.132–5(m) (as contained in 26 CFR part 1 (§§1.61 to 1.169) revised April 1, 1992). See §§1.132–1T, 1.132–2T, 1.132–3T, 1.132–4T, 1.132–5T, 1.132–6T, 1.132–7T and 1.132–8T for rules in effect for benefits received from January 1, 1985, to December 31, 1988.

[T.D. 8256, 54 FR 28601, July 6, 1989, as amended by T.D. 8457, 57 FR 62196, Dec. 30, 1992; 58 FR 7296, Feb. 5, 1993]

**§ 1.132–1T Exclusion from gross income of certain fringe benefits—1985 through 1988 (temporary).**

(a) *In general.* Gross income does not include any fringe benefit which qualifies as a—

(1) No-additional-cost service,

(2) Qualified employee discount,

(3) Working condition fringe, or

(4) De minimis fringe.

Special rules apply with respect to certain on-premises gyms and other athletic facilities (§1.132–1T(e)), demonstration use of employer-provided automobiles by full-time automobile salesmen (§1.132–1T(n)), parking provided to an employee on or near the business premises of the employer (§1.132–5T(o)), and on-premises eating facilities (§1.132–7T).

(b) *Definition of employee*—(1) *No-additional-cost services and qualified employee discounts.* For purposes of section 132(a)(1) (relating to no-additional-cost services) and section 132(a)(2) (relating to qualified employee discounts), the term ''employee'' (with respect to a line of business of an employer) means—

(i) Any individual who is currently employed by the employer in the line of business,

(ii) Any individual who was formerly employed by the employer in the line of business and who separated from service with the employer in the line of business by reason of retirement or disability, and

(iii) Any widow or widower of an individual who died while employed by the employer in the line of business or who separated from service with the employer in the line of business by reason of retirement or disability.

For purposes of this paragraph (b)(1), any partner who performs services for a partnership is considered employed by the partnership. In addition, any use by the spouse or dependent child (as defined in this paragraph (b)) of the employee will be treated as use by the employee.

(2) *Working condition fringes.* For purposes of section 132(a)(2) (relating to working condition fringes), the term ''employee'' means—

(i) Any individual who is currently employed by the employer,

(ii) Any partner who performs services for the partnership,

(iii) Any director of the employer, and

(iv) Any independent contractor who performs services for the employer.

Notwithstanding anything in this paragraph (b)(2) to the contrary, any independent contractor who performs services for the employer cannot exclude the value of parking or the use of consumer goods provided pursuant to a product testing program under §1.132–5T (n); in addition, any director of the employer cannot exclude the value of the use of consumer goods provided pursuant to a product testing program under §1.132–5T (n).

(3) *De minimis fringe.* For purpose of section 132(a)(4) (relating to de minimis fringes), the term ''employee'' means any recipient of a fringe benefit.

(4) *Dependent child.* For purposes of this paragraph (b), the term ''dependent child'' means any son, stepson, daughter or stepdaughter of the employee who is a dependent of the employee, or both of whose parents are deceased. Any child to whom section

152(e) applies will be treated as the dependent of both parents.

(c) *Special rules for employers—Effect of section 414.* All employees treated as employed by a single employer under section 414(b), (c) or (m) will be treated as employed by a single employer for purposes of this section. Thus, employees of one corporation that is part of a controlled group of corporations may under certain circumstances be eligible to receive section 132 benefits from the other corporations that comprise the controlled group. However, the aggregation of employers described in this paragraph (c) does not change the other requirements for an exclusion, such as the line of business requirement. Thus, for example, if a controlled group of corporations consists of two corporations that operate in different lines of business, the corporations are not treated as operating in the same line of business even though the corporations are treated as one employer.

(d) *Customers not to include employees.* For purposes of section 132 and the regulations thereunder, the term ''customer'' means customers who are not employees. However, the preceding sentence does not apply to section 132(c)(2) (relating to the gross profit percentage for determining a qualified employee discount). Thus, an employer that provides employee discounts cannot exclude sales made to employees in determining the aggregate sales to customers.

(e) *Treatment of on-premises athletic facilities*—(1) *In general.* Gross income does not include the value of any on-premises athletic facility provided by the employer to its employees. For purposes of section 132 and this paragraph (e), the term ''on-premises athletic facility'' means any gym or other athletic facility (such as a pool, tennis court, or golf course)—

(i) Which is located on the premises of the employer,

(ii) Which is operated by the employer, and

(iii) Where substantially all of the use of which is, during the calendar year, by employees of the employer, their spouses, and their dependent children.

For purposes of this paragraph (e)(1)(iii), the term ''dependent children'' has the same meaning as the plural of the term ''dependent child'' in paragraph (b)(4) of this section. The exclusion of this paragraph (e) does not apply to any athletic facility if access to the facility is made available to the general public through the sale of memberships, the rental of the facility, etc.

(2) *Premises of the employer.* The athletic facility need not be located on the employer's business premises. However, the athletic facility must be located on premises of the employer. The exclusion provided in this paragraph (e) applies whether the premises are owned or leased by the employer; in addition, the exclusion is available even if the employer is not a named lesse on the lease so long as the employer pays reasonable rent. The exclusion provided in this paragraph (e) does not apply to any athletic facility that is a facility for residential use. Thus, for example, a resort with accompanying athletic facilities (such as tennis courts, pool, and gym) would not qualify for the exclusion provided in this paragraph (e).

(3) *Application of rules to membership in an athletic facility.* The exclusion provided in this paragraph (e) does not apply to any membership in an athletic facility (including health clubs or country clubs) unless the facility is owned (or leased) and operated by the employer and substantially all the use of the facility is by employees of the employer, their spouses, and their dependent children. Therefore, membership in health club or country club not meeting the rules provided in this paragraph (e) would not quality for the exclusion.

(4) *Operation by the employer.* An employer is considered to operate the athletic facility if the employer itself operates the facility through its own employees, or if the employer contracts out to another to operate the athletic facility. For example, if an employer hires an independent contractor to operate the athletic facility for the employer's employees, the facility is considered to be operated by the employer. In addition, if an athletic facility is operated by more than one employer, it is

considered to be operated by each employer. For purposes of paragraph (e)(1)(iii) of this section, substantially all the use of a facility operated by more than one employer must be by employees of all of the employers, their spouses, and their dependent children. Where the facility is operated by more than one employer, an employer that either pays rent directly to the owner of the premises or pays rent to a named lessor of the premises is eligible for the exclusion.

(5) *Nonapplicability of nondiscrimination rules.* The nondiscrimination rules of section 132 and §1.132–8T do not apply to on-premises athletic facilities.

(f) *Nonapplicability of section 132.* If the tax treatment of a particular fringe benefit is expressely provided for in another section of Chapter 1, section 132 and the applicable regulations (except for section 132 (e) and the regulations thereunder) do not apply to such fringe benefits. For example, since section 129 provides an exclusion from gross income for amounts paid or incurred by the employer for dependent care assistance for an employee, the exclusions under section 132 and this section do not apply to the provision by an employer to an employee of dependent care assistance.

[T.D. 8063, 50 FR 52297, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28600, July 6, 1989]

### § 1.132–2 No-additional-cost services.

(a) *In general*—(1) *Definition.* Gross income does not include the value of a no-additional-cost service. A ''no-additional-cost service'' is any service provided by an employer to an employee for the employee's personal use if—

(i) The service is offered for sale by the employer to its customers in the ordinary course of the line of business of the employer in which the employee performs substantial services, and

(ii) The employer incurs no substantial additional cost in providing the service to the employee (including foregone revenue and excluding any amount paid by or on behalf of the employee for the service).

For rules relating to the line of business limitation, see §1.132–4. For purposes of this section, a service will not be considered to be offered for sale by the employer to its customers if that service is primarily provided to employees and not to the employer's customers.

(2) *Excess capacity services.* Services that are eligible for treatment as no-additional-cost services include excess capacity services such as hotel accommodations; transportation by aircraft, train, bus, subway, or cruise line; and telephone services. Services that are not eligible for treatment as no-additional-cost services are non-excess capacity services such as the facilitation by a stock brokerage firm of the purchase of stock. Employees who receive non-excess capacity services may, however, be eligible for a qualified employee discount of up to 20 percent of the value of the service provided. See §1.132–3.

(3) *Cash rebates.* The exclusion for a no-additional-cost service applies whether the service is provided at no charge or at a reduced price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the service.

(4) *Applicability of nondiscrimination rules.* The exclusion for a no-additional-cost service applies to highly compensated employees only if the service is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of highly compensated employees. See §1.132–8.

(5) *No substantial additional cost*—(i) *In general.* The exclusion for a no-additional-cost service applies only if the employer does not incur substantial additional cost in providing the service to the employee. For purposes of the preceding sentence, the term ''cost'' includes revenue that is forgone because the service is provided to an employee rather than a nonemployee. (For purposes of determining whether any revenue is forgone, it is assumed that the employee would not have purchased the service unless it were available to the employee at the actual price charged to the employee.) Whether an employer incurs substantial additional

cost must be determined without regard to any amount paid by the employee for the service. Thus, any reimbursement by the employee for the cost of providing the service does not affect the determination of whether the employer incurs substantial additional cost.

(ii) *Labor intensive services.* An employer must include the cost of labor incurred in providing services to employees when determining whether the employer has incurred substantial additional cost. An employer incurs substantial additional cost, whether nonlabor costs are incurred, if a substantial amount of time is spent by the employer or its employees in providing the service to employees. This would be the result whether the time spent by the employer or its employees in providing the services would have been "idle," or if the services were provided outside normal business hours. An employer generally incurs no substantial additional cost, however, if the services provided to the employee are merely incidental to the primary service being provided by the employer. For example, the in-flight services of a flight attendant and the cost of in-flight meals provided to airline employees traveling on a space-available basis are merely incidental to the primary service being provided (*i.e.*, air transportation). Similarly, maid service provided to hotel employees renting hotel rooms on a space-available basis is merely incidental to the primary service being provided (*i.e.*, hotel accommodations).

(6) *Payments for telephone service.* Payment made by an entity subject to the modified final judgment (as defined in section 559(c)(5) of the Tax Reform Act of 1984) of all or part of the cost of local telephone service provided to an employee by a person other than an entity subject to the modified final judgment shall be treated as telephone service provided to the employee by the entity making the payment for purposes of this section. The preceding sentence also applies to a rebate of the amount paid by the employee for the service and a payment to the person providing the service. This paragraph (a)(6) applies only to services and employees described in §1.132–4 (c). For a special line of business rule relating to such services and employees, see §1.132–4 (c).

(b) *Reciprocal agreements.* For purposes of the exclusion from gross income for a no-additional-cost service, an exclusion is available to an employee of one employer for a no-additional-cost service provided by an unrelated employer only if all of the following requirements are satisfied—

(1) The service provided to such employee by the unrelated employer is the same type of service generally provided to nonemployee customers by both the line of business in which the employee works and the line of business in which the service is provided to such employee (so that the employee would be permitted to exclude from gross income the value of the service if such service were provided directly by the employee's employer);

(2) Both employers are parties to a written reciprocal agreement under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer; and

(3) Neither employer incurs any substantial additional cost (including forgone revenue) in providing such service to the employees of the other employer, or pursuant to such agreement. If one employer receives a substantial payment from the other employer with respect to the reciprocal agreement, the paying employer will be considered to have incurred a substantial additional cost pursuant to the agreement, and consequently services performed under the reciprocal agreement will not qualify for exclusion as no-additional-cost services.

(c) *Example.* The rules of this section are illustrated by the following example:

*Example.* Assume that a commercial airline permits its employees to take personal flights on the airline at no charge and receive reserved seating. Because the employer forgoes potential revenue by permitting the employees to reserve seats, employees receiving such free flights are not eligible for the no-additional-cost exclusion.

[T.D. 8256, 54 FR 28602, July 6, 1989]

**§ 1.132–2T No-additional-cost service—1985 through 1988 (temporary).**

(a) *In general*—(1) *Definition.* Gross income does not include the value of a no-additional-cost service. The term ''no-additional-cost service'' means any service provided by an employer to an employee for the employee's personal use if—

(i) The service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee performs substantial services, and

(ii) The employer incurs no substantial additional cost in providing the service to the employee (including forgone revenue and excluding any amount paid by or on behalf of the employee for the service).

For rules relating to the line of business limitation, see § 1.132–4T.

(2) *Examples.* Services that are eligible for treatment as no-additional-cost services are excess capacity services such as hotel accommodations; transportation by aircraft, train, bus, subway, or cruise line; and telephone services. Services that are not eligible for treatment as no-additonal-cost services are non-excess capacity services such as the facilitation by a stock brokerage firm of the purchase of stock. Employees who receive non-excess capacity services may, however, be eligible for a qualified employee discount of up to 20 percent of the value of the service provided. See § 1.132-3T.

(3) *Cash rebates.* The exclusion for a no-additional-cost service applies whether the service is provided at no charge or at a reduced price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the service.

(4) *Applicability of nondiscrimination rules.* The exclusion for a no-additional-cost service applies to officers, owners, and highly compensated employees only if the service is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, or highly compensated employees. See § 1.132-8T.

(5) *No substantial additional cost*—(i) *In general.* The exclusion for a non-additional-cost service applies only if the employer does not incur substantial additional cost in providing the service to the employee. For purposes of the preceding sentence, the term ''cost'' includes revenue that is forgone because the service is provided to an employee rather than a nonemployee. (For purposes of determining whether any revenue is forgone, it is assumed that the employee would not have purchased the service unless it were available to the employee at the actual price charged to the employee.) Whether an employer incurs substantial additional cost must be determined without regard to any amount paid by the employee for the service. Thus, any reimbursement by the employee for the cost of providing the service does not affect the determination of whether the employer incurs substantial additional cost.

(ii) *Labor intensive services.* An employer must include the cost of labor incurred in providing services to employees when determining whether the employer has incurred substantial additional cost. An employer has incurred substantial additional cost. An employer incurs substantial additional cost, whether or not non-labor costs are incurred, if a substantial amount of time is spent by the employer or its employees in providing the service to employees. This would be the result whether or not the time spent by the employer or its employees in providing the services would have been ''idle'', or if the services were provided outside normal business hours. An employer generally incurs no substantial additional cost, however, if the employee services provided are merely incidental to the primary service being provided by the employer. For example, the in-flight services of a flight attendant provided to airline employees traveling on a space-available basis are merely incidental to the primary service being provided (*i.e.*, air transportation). In addition, the cost of in-flight meals provided to airline employees is not considered substantial in relation to the air transportation being provided.

(b) *Reciprocal agreements.* For purposes of the exclusion for a no-additional-cost service, any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if all of the following requirements are satisfied:

(1) The service is provided pursuant to a written reciprocal agreement between the employers under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer;

(2) The service provided pursuant to the agreement to the employees of both employers is the same type of service provided by the employers to customers both in the line of business in which the employees perform substantial services and the line of business in which the service is provided to customers; and

(3) Neither employer incurs substantial additional cost (including forgone revenue) in providing the service to the employees of the other employer or pursuant to the agreement.

If one employer receives a substantial payment from the other employer with respect to the reciprocal agreement, the paying employer will be considered to have incurred a substantial additional cost pursuant to the agreement.

[T.D. 8063, 50 FR 52298, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28600, July 6, 1989]

### § 1.132–3 Qualified employee discounts.

(a) *In general*—(1) *Definition.* Gross income does not include the value of a qualified employee discount. A ''qualified employee discount'' is any employee discount with respect to qualified property or services provided by an employer to an employee for use by the employee to the extent the discount does not exceed—

(i) The gross profit percentage multiplied by the price at which the property is offered to customers in the ordinary course of the employer's line of business, for discounts on property, or

(ii) Twenty percent of the price at which the service is offered to customers, for discounts on services.

(2) *Qualified property or services*—(i) *In general.* The term ''qualified property or services'' means any property or services that are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee performs substantial services. For rules relating to the line of business limitation, see § 1.132–4.

(ii) *Exception for certain property.* The term ''qualified property'' does not include real property and it does not include personal property (whether tangible or intangible) of a kind commonly held for investment. Thus, an employee may not exclude from gross income the amount of an employee discount provided on the purchase of securities, commodities, or currency, or of either residential or commercial real estate, whether or not the particular purchase is made for investment purposes.

(iii) *Property and services not offered in ordinary course of business.* The term ''qualified property or services'' does not include any property or services of a kind that is not offered for sale to customers in the ordinary course of the line of business of the employer. For example, employee discounts provided on property or services that are offered for sale primarily to employees and their families (such as merchandise sold at an employee store or through an employer-provided catalog service) may not be excluded from gross income. For rules relating to employer-operated eating facilities, see § 1.132–7, and for rules relating to employer-operated on-premises athletic facilities, see § 1.132–1(e).

(3) *No reciprocal agreement exception.* The exclusion for a qualified employee discount does not apply to property or services provided by another employer pursuant to a written reciprocal agreement that exists between employers to provide discounts on property and services to employees of the other employer.

(4) *Property or services provided without charge, at a reduced price, or by rebates.* The exclusion for a qualified employee discount applies whether the property or service is provided at no charge (in which case only part of the discount may be excludable as a qualified employee discount) or at a reduced

price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the property or service.

(5) *Property or services provided directly by the employer or indirectly through a third party.* A qualified employee discount may be provided either directly by the employer or indirectly through a third party. For example, an employee of an appliance manufacturer may receive a qualified employee discount on the manufacturer's appliances purchased at a retail store that offers such appliances for sale to customers. The employee may exclude the amount of the qualified employee discount whether the employee is provided the appliance at no charge or purchases it at a reduced price, or whether the employee receives a partial or total cash rebate from either the employer-manufacturer or the retailer. If an employee receives additional rights associated with the property that are not provided by the employee's employer to customers in the ordinary course of the line of business in which the employee performs substantial services (such as the right to return or exchange the property or special warranty rights), the employee may only receive a qualified employee discount with respect to the property and not the additional rights. Receipt of such additional rights may occur, for example, when an employee of a manufacturer purchases property manufactured by the employee's employer at a retail outlet.

(6) *Applicability of nondiscrimination rules.* The exclusion for a qualified employee discount applies to highly compensated employees only if the discount is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of highly compensated employees. See §1.132–8.

(b) *Employee discount*—(1) *Definition.* The term ''employee discount'' means the excess of—

(i) The price at which the property or service is being offered by the employer for sale to customers, over

(ii) The price at which the property or service is provided by the employer to an employee for use by the employee. A transfer of property by an employee without consideration is treated as use by the employee for purposes of this section. Thus, for example, if an employee receives a discount on property offered for sale by his employer to customers and the employee makes a gift of the property to his parent, the property will be considered to be provided for use by the employee; thus, the discount will be eligible for exclusion as a qualified employee discount.

(2) *Price to customers*—(i) *Determined at time of sale.* In determining the amount of an employee discount, the price at which the property or service is being offered to customers at the time of the employee's purchase is controlling. For example, assume that an employer offers a product to customers for $20 during the first six months of a calendar year, but at the time the employee purchases the product at a discount, the price at which the product is being offered to customers is $25. In this case, the price from which the employee discount is measured is $25. Assume instead that, at the time the employee purchases the product at a discount, the price at which the product is being offered to customers is $15 and the price charged the employee is $12. The employee discount is measured from $15, the price at which the product is offered for sale to customers at the time of the employee purchase. Thus, the employee discount is $15 − $12, or $3.

(ii) *Quantity discount not reflected.* The price at which a property or service is being offered to customers cannot reflect any quantity discount unless the employee actually purchases the requisite quantity of the property or service.

(iii) *Price to employer's customers controls.* In determining the amount of an employee discount, the price at which a property or service is offered to customers of the employee's employer is controlling. Thus, the price at which the property is sold to the wholesale customers of a manufacturer will generally be lower than the price at which the same property is sold to the customers of a retailer. However, see paragraph (a)(5) of this section regarding the effect of a wholesaler providing to its employees additional rights not provided to customers of the wholesaler in the ordinary course of its business.

(iv) *Discounts to discrete customer or consumer groups.* Subject to paragraph (2)(ii) of this section, if an employer offers for sale property or services at one or more discounted prices to discrete customer or consumer groups, and sales at all such discounted prices comprise at least 35 percent of the employer's gross sales for a representative period, then in determining the amount of an employee discount, the price at which such property or service is being offered to customers for purposes of this section is a discounted price. The applicable discounted price is the current undiscounted price, reduced by the percentage discount at which the greatest percentage of the employer's discounted gross sales are made for such representative period. If sales at different percentage discounts equal the same percentage of the employer's gross sales, the price at which the property or service is being provided to customers may be reduced by the average of the discounts offered to each of the two groups. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the property or service is provided to the employee at a discount. If more than one employer would be aggregated under section 414 (b), (c), (m), or (o), and not all of the employers have the same taxable year, the employers required to be aggregated must designate the 12-month period to be used in determining gross sales for a representative period. The 12-month period designated, however, must be used on a consistent basis.

(v) *Examples.* The rules provided in this paragraph (b)(2) are illustrated by the following examples:

*Example 1.* Assume that a wholesale employer offers property for sale to two discrete customer groups at differing prices. Assume further that during the prior taxable year of the employer, 70 percent of the employer's gross sales are made at a 15 percent discount and 30 percent at no discount. For purposes of this paragraph (b)(2), the current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the 15 percent discount.

*Example 2.* Assume that a retail employer offers a 20 percent discount to members of the American Bar Association, a 15 percent discount to members of the American Medical Association, and a ten percent discount to employees of the Federal Government. Assume further that during the prior taxable year of the employer, sales to American Bar Association members equal 15 percent of the employer's gross sales, sales to American Medical Association members equal 20 percent of the employer's gross sales, and sales to Federal Government employees equal 25 percent of the employer's gross sales. For purposes of this paragraph (b)(2), the current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the ten percent Federal Government discount.

(3) *Damaged, distressed, or returned goods.* If an employee pays at least fair market value for damaged, distressed, or returned property, such employee will not have income attributable to such purchase.

(c) *Gross profit percentage*—(1) *In general*—(i) *General rule.* An exclusion from gross income for an employee discount on qualified property is limited to the price at which the property is being offered to customers in the ordinary course of the employer's line of business, multiplied by the employer's gross profit percentage. The term "gross profit percentage" means the excess of the aggregate sales price of the property sold by the employer to customers (including employees) over the employer's aggregate cost of the property, then divided by the aggregate sales price.

(ii) *Calculation of gross profit percentage.* The gross profit percentage must be calculated separately for each line of business based on the aggregate sales price and aggregate cost of property in that line of business for a representative period. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the discount is available. For example, if the aggregate amount of sales of property in an employer's line of business for the prior taxable year was $800,000, and the aggregate cost of the property for the year was $600,000, the gross profit percentage would be 25 percent ($800,000 minus $600,000, then divided by $800,000). If two or more employers are required to aggregate under section 414 (b), (c), (m), or (o) (aggregated employer), and if all of the aggregated employers do not share the same taxable year, then the aggregated employers must designate the 12-month period to be used in determining the gross profit percentage. The 12-month period designated, however, must be used on a consistent basis. If an employee performs substantial services in more than one line of business, the gross profit percentage of the line of business in which the property is sold determines the amount of the excludable employee discount.

(iii) *Special rule for employers in their first year of existence.* An employer in its first year of existence may estimate the gross profit percentage of a line of business based on its mark-up from cost. Alternatively, an employer in its first year of existence may determine the gross profit percentage by reference to an appropriate industry average.

(iv) *Redetermination of gross profit percentage.* If substantial changes in an employer's business indicate at any time that it is inappropriate for the prior year's gross profit percentage to be used for the current year, the employer must, within a reasonable period, redetermine the gross profit percentage for the remaining portion of the current year as if such portion of the year were the first year of the employer's existence.

(2) *Line of business.* In general, an employer must determine the gross profit percentage on the basis of all property offered to customers (including employees) in each separate line of business. An employer may instead select a classification of property that is narrower than the applicable line of business. However, the classification must be reasonable. For example, if an employer computes gross profit percentage according to the department in which products are sold, such classification is reasonable. Similarly, it is reasonable to compute gross profit percentage on the basis of the type of merchandise sold (such as high mark-up and low mark-up classifications). It is not reasonable, however, for an employer to classify certain low mark-up products preferred by certain employees (such as highly compensated employees) with high mark-up products or to classify certain high mark-up products preferred by other employees with low mark-up products.

(3) *Generally accepted accounting principles.* In general, the aggregate sales price of property must be determined in accordance with generally accepted accounting principles. An employer must compute the aggregate cost of property in the same manner in which it is computed for the employer's Federal income tax liability; thus, for example, section 263A and the regulations thereunder apply in determining the cost of property.

(d) *Treatment of leased sections of department stores*—(1) *In general*—(i) *General rule.* For purposes of determining whether employees of a leased section of a department store may receive qualified employee discounts at the department store and whether employees of the department store may receive qualified employee discounts at the leased section of the department store, the leased section is treated as part of the line of business of the person operating the department store, and employees of the leased section are treated as employees of the person operating the department store as well as employees of their employer. The term ''leased section of a department store'' means a section of a department store where substantially all of the gross receipts of the leased section are from over-the-counter sales of property made under a lease, license, or similar arrangement where it appears to the general public that individuals making such sales are employed by the department store. A leased section of a department store which, in connection with the offering of beautician services, customarily makes sales of beauty aids in the ordinary course of business is deemed to derive substantially all of its gross receipts from over-the-counter sales of property.

(ii) *Calculation of gross profit percentage.* For purposes of paragraph (d) of this section, when calculating the gross profit percentage of property and services sold at a department store, sales of property and services sold at the department store, as well as sales of property and services sold at the leased section, are considered. The rule provided in the preceding sentence does not apply, however, if it is more reasonable to calculate the gross profit percentage for the department store and leased section separately, or if it would be inappropriate to combine them (such as where either the department store or the leased section but not both provides employee discounts).

(2) *Employees of the leased section*—(i) *Definition*. For purposes of this paragraph (d), ''employees of the leased section'' means all employees who perform substantial services at the leased section of the department store regardless of whether the employees engage in over-the-counter sales of property or services. The term ''employee'' has the same meaning as in section 132(f) and § 1.132–1(b)(1).

(ii) *Discounts offered to either department store employees or employees of the leased section*. If the requrements of this paragraph (d) are satisfied, employees of the leased section may receive qualified employee discounts at the department store whether or not employees of the department store are offered discounts at the leased section. Similarly, employees of the department store may receive a qualified employee discount at the leased section whether or not employees of the leased section are offered discounts at the department store.

(e) *Excess discounts*. Unless excludable under a provision of the Internal Revenue Code of 1986 other than section 132(a)(2), an employee discount provided on property is excludable to the extent of the gross profit percentage multiplied by the price at which the property is being offered for sale to customers. If an employee discount exceeds the gross profit percentage, the excess discount is includible in the employee's income. For example, if the discount on employer-purchased property is 30 percent and the employer's gross profit percentage for the period in the relevant line of business is 25 percent, then 5 percent of the price at which the property is being offered for sale to customers is includible in the empoyee's income. With respect to services, an employee discount of up to 20 percent may be excludable. If an employee discount exceeds 20 percent, the excess discount is includible in the employee's income. For example, assume that a commercial airline provides a pass to each of its employees permitting the employees to obtain a free round-trip coach ticket with a confirmed seat to any destination the airline services. Neither the exclusion of section 132(a)(1) (relating to no-additional-cost services) nor any other statutory exclusion applies to a flight taken primarily for personal purposes by an employee under this program. However, an employee discount of up to 20 percent may be excluded as a qualified employee discount. Thus, if the price charged to customers for the flight taken is $300 (under restrictions comparable to those actually placed on travel associated with the employee airline ticket), $60 is excludible from gross income as a qualified employee discount and $240 is includible in gross income.

[T.D. 8256, 54 FR 28603, July 6, 1989]

### § 1.132–3T Qualified employee discount—1985 through 1988 (temporary).

(a) *In general*—(1) *Definition*. Gross income does not include the value of a qualified employee discount. The term ''qualified employee discount'' means any employee discount with respect to qualified property or services provided by an employer to an employee for the employee's personal use to the extent the discount does not exceed—

(i) The gross profit percentage of the price at which the property is offered to customers, for discounts on property, or

(ii) 20 percent of the price at which the services are offered to customers, for discounts on services.

(2) *Qualified property or services*—(i) *In general*. The term ''qualified property or services'' means any property or services that are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee performs substantial services. For rules relating to the line of business limitation, see § 1.132–4T.

(ii) *Exception for certain property.* The term ''qualified property'' does not include real property and it does not include personal property (whether tangible or intangible) of a kind commonly held for investment. Thus, an employee may not exclude from gross income the amount of an employee discount provided on the purchase of either residential or commercial real estate, securities, commodities, or currency, whether or not the particular purchase is made for investment purposes.

(iii) *Property and services not offered in ordinary course of business.* The term ''qualified property or services'' does not include any property or services of a kind that is not offered for sale to customers in the ordinary course of the line of business of the employer. For example, employee discounts provided on property or services that are offered for sale only to employees and their families (such as merchandise sold at an employee store or through an employer-provided catalog service) may not be excluded from gross income.

(3) *No reciprocal agreement exception.* The exclusion for a qualified employee discount does not apply to property or services provided by another employer pursuant to a written reciprocal agreement that exists between employers to provide discounts on property and services to employees of the other employer.

(4) *Cash or third-party rebates*—(i) *Property or services provided without charge or at a reduced price.* The exclusion for a qualified employee discount applies whether the property or service is provided at no charge (in which case only part of the discount may be excludable as a qualified employee discount) or at a reduced price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the property or service.

(ii) *Property or services provided directly by the employer or indirectly through a third party.* A qualified employee discount may be provided either directly by the employer or indirectly through a third party. For example, an employee of an appliance manufacturer may receive a qualified employee discount on the manufacturer's appliances purchased at a retail store that offers such appliances for sale to customers. The employee may exclude the amount of the qualified employee discount whether the employee is provided the appliance at no charge or purchases it at a reduced price, or whether the employee receives a partial or total cash rebate from either the employer-manufacturer or the retailer. If an employee receives additional rights associated with the property that are not provided by the employee's employer to customers in the ordinary course of the line of business in which the employee performs substantial services (such as the right to return or exchange the property or special warranty rights), the employee may only receive a qualified employee discount with respect to the property and not the additional rights. Receipt of such additional rights may occur, for example, when an employee of a manufacturer purchases property manufactured by the employee's employer at a retail outlet.

(5) *Applicability of nondiscrimination rules.* The exclusion for a qualified employee discount applies to officers, owners, and highly compensated employees only if the discount is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, or highly compensated employees. See §1.132–8T.

(b) *Employee discount*—(1) *Definition.* The term ''employee discount'' means the excess of—

(i) The price at which the property or service is being offered by the employer for sale to customers, over

(ii) The price at which the property or service is provided by the employer to an employee for use by the employee.

A transfer of property by an employee without consideration is considered use by the employee for purposes of this section. Thus, for example, if an employee receives a discount on property offered for sale by his employer to customers and the employee makes a gift of the property to his parent, the property will be considered to be provided for use by the employee, thus enabling the discount to be eligible for exclusion as a qualified employee discount.

(2) *Price to customers*—(i) *Determined at time of sale*. In determining the amount of an employee discount, the price at which the property or service is being offered to customers at the time of the employee's purchase is controlling. For example, assume that an employer offers a product to customers for $20 during the first six months of a calendar year, but at the time the employee purchases the product at a discount, the price at which the product is being offered to customers is $25. In this case, the price from which the employee discount is measured is $25.

(ii) *Quantity discount not reflected*. The price referred to in paragraph (b)(2)(i) of this section cannot reflect any quantity discount unless the employee actually purchases the requisite quantity of the property or service.

(iii) *Customers of employee's employer controls*. In determining the amount of an employee discount, the price at which the property or service is offered to customers of the employee's employer is controlling. Thus, the price at which property is sold to the wholesale customers of a manufacturer will generally be lower than the price at which the same property is sold to the customers of a retailer. However, see paragraph (a)(4)(ii) of this section regarding the effect of a wholesaler providing to its employees additional rights not provided to customers of the wholesaler in the ordinary course of its business.

(iv) *Discounts to discrete customer or consumer groups*. In determining the amount of an employee discount, if an employer offers for sale property or services at one or more discounted prices to discrete customer or consumer groups, and sales at all such discounted prices comprise at least 35 percent of the employer's gross sales for a representative period, then the price at which property or service is being offered to customers is a discounted price. The applicable discounted price is the current undiscounted price, reduced by the percentage discount at which the greatest percentage of the employer's gross sales are made for such representative period. If sales at different percentage discounts equal the same percentage of the employer's gross sales, the price at which the property or service is being provided to customers may be reduced by the average of the two group discounts. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the property or service is provided to the employee at a discount. If more than one employer would be aggregated under section 414 (b), (c), or (m), and all of the employers do not have the same taxable year, the employers required to be aggregated must designate the 12-month period to be used in determining gross sales for a representative period.

(v) *Examples*. The rules provided in this paragraph (b)(2) are illustrated by the following examples:

*Example 1*. Assume that a wholesale employer offers property for sale to two discrete customer groups at differing prices. Assume further that during the prior taxable year of the employer, 70 percent of the employer's gross sales are made at a 15-percent discount and 30 percent at no discount. The current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the 15-percent discount.

*Example 2*. Assume that a retail employer offers a 20 percent discount to members of the American Bar Association, a 15 percent discount to members of the American Medical Association, and a ten percent discount to employees of the Federal Government. Assume further that during the prior taxable year of the employer, sales to American Bar Association members equal 15 percent of the employer's gross sales, sales to American Medical Association members equal 20 percent of the employer's gross sales, and sales to Federal Government employees equal 25 percent of the employer's gross sales. The current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the ten percent Federal Government discount.

(3) *Damaged, distressed, or returned goods*. If an employee pays at least fair market value for damaged, distressed, or returned property, such employee will not have income attributable to such purchase.

(c) *Gross profit percentage*—(1) *In general*—(i) *General rule*. An exclusion from gross income for an employee discount on qualified property is limited to the price at which the property is being offered to customers in the ordinary course of the employer's line of business, multiplied by the employer's gross profit percentage. The term ''gross profit percentage'' means the excess of the aggregate sales price of the property sold by the employer to customers (including employees) over the employer's aggregate cost of the property, then divided by the aggregate sales price.

(ii) *Calculation of gross profit percentage.* The gross profit percentage must be calculated separately for each line of business based on the aggregate sales price and aggregate cost of property in that line of business for a representative period. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the discount is available. For example, if the aggregate sales of property in an employer's line of business for the prior taxable year were $800,000, and the aggregate cost of the property for the year were $600,000, the gross profit percentage would be 25 percent ($800,000 minus $600,000, then divided by $800,000). If more than one employer would be aggregated under section 414 (b), (c), or (m), and all of the employers do not have the same taxable year, the employers required to be aggregated must designate the 12-month period to be used in determining the gross profit percentage. If an employee performs substantial services in more than one line of business, the gross profit percentage of the line of business in which the property is sold determines the amount of the excludable employee discount.

(iii) *Special rule for employers in their first year of existence.* An employer in its first year of existence may estimate the gross profit percentage of a line of business based on its mark-up from the cost. Alternatively, an employer in its first year of existence may determine the gross profit percentage by reference to an appropriate industry average.

(iv) *Redetermination of gross profit percentage.* If substantial changes in an employer's business indicate at any time that it is inappropriate for the prior years' gross profit percentage to be used for the current year, the employer must, within a reasonable period, redetermine the gross profit percentage for the remaining portion of the current year as if such portion of the year were the first year of the employer's existence.

(2) *Line of business.* In general, an employer must determine the gross profit percentage on the basis of all property offered to customers (including employees) in each separate line of business. An employer may instead select a classification of property that is narrower than the applicable line of business. However, such classification must be reasonable. For example, if an employer computes gross profit percentage according to the department in which products are sold, such classification is reasonable. Similarly, it is reasonable to compute gross profit percentage on the basis of the type of merchandise sold (such as high mark-up and low mark-up classifications). It is not reasonable, however, for an employer to classify certain low mark-up products preferred by certain employees (such as officers, owners, and highly compensated employees) with high mark-up products or to classify certain high mark-up products preferred by other employees with low mark-up products.

(3) *Generally accepted accounting principles.* In general, the aggregate sales price of property must be determined in accordance with generally accepted accounting principles. An employer must compute the aggregate cost of property in the same manner in which it is computed for the employer's Federal income tax liability, pursuant to the inventory rules in section 471 and the regulations thereunder.

(d) *Treatment of leased sections of department stores*—(1) *In general*—(i) *General rule.* For purposes of determining whether employees of a leased section of a department store may receive qualified employees discounts at the department store and whether employees of the department store may receive qualified employee discounts at the leased section of the department store, the leased section is treated as part of the line of business of the person operating the department store, and employees of the leased section are treated as employees of the person operating the department store as well as employees of their employer. The term ''leased section of a department store'' means a section of a department store where substantially all of the gross receipts of the leased section are over-the-counter sales of property made under a lease, license, or similar arrangement where it appears to the general public that individuals making such sales are employed by the department store. An example of a leased section of a department store is a cosmetics firm that leases floor space from a department store.

(ii) *Calculation of gross profit percentage.* When calculating the gross profit percentage of property and services sold at the department store under paragraph (c) of this section, sales of property and services sold at the department store, as well as sales of property and services sold at the leased section, are considered. The rule provided in the preceding sentence does not apply, however, if it is reasonable to calculate the gross profit percentage for the department store and leased section separately, or if it would be inappropriate to combine them (such as where either the department store or the leased section, but not both, provides employee discounts).

(2) *Employees of the leased section*—(i) *Definition.* For purposes of this paragraph (d), ''employees of the leased section'' means all employees who perform substantial services at the leased section regardless of whether the employees engage in over-the-counter sales of property or services. The term ''employee'' has the same meaning as in section 133(f).

(ii) *Discounts offered to either department store employees or employees of the leased section.* If the requirements of this paragraph (d) are satisfied, employees of the leased section may receive qualified employee discounts at the department store regardless of whether employees of the department store are offered discounts at the leased section. Similarly, regardless of whether employees of the leased section are offered discounts at the department store, employees of the department store may receive qualified employee discounts at the leased section.

(e) *Excess discounts.* Unless excludable under a statutory provision other than section 132(a)(2), an employee discount provided on property is excludable to the extent of the gross profit percentage multiplied by the price at which the property is being offered for sale to customers. If an employee discount exceeds the gross profit percentage, the excess discount is includible in the employee's income. For example, if the discount on property is 30 percent and the employer's gross profit percentage for the period in the relevant line of business is 25 percent, then 5 percent of the price at which the property is being offered for sale to customers is includible in the emloyee's income. With respect to services, an employee discount of up to 20 percent may be excludable. If an employee discount exceeds 20 percent, the excess discount is includible in the employee's income.

[T.D. 8063, 50 FR 52299, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28600, July 6, 1989]

### § 1.132–4 Line of business limitation.

(a) *In general*—(1) *Applicability*—(i) *General rule.* A no-additional-cost service or a qualified employee discount provided to an employee is only available with respect to property or services that are offered for sale to customers in the ordinary course of the same line of business in which the employee receiving the property or service performs substantial services. Thus, an employee who does not perform substantial services in a particular line of business of the employer may not exclude from income under section 132 (a)(1) or (a)(2) the value of services or employee discounts received on property or services in that line of business. For rules that relax the line of business requirement, see paragraphs (b) through (g) of this section.

(ii) *Property and services sold to employees rather than customers.* Because the property or services must be offered for sale to customers in the ordinary course of the same line of business in which the employee performs substantial services, the line of business limitation is not satisfied if the employer's products or services are sold primarily to employees of the employer, rather than to customers. Thus, for example, an employer in the banking line of business is not considered in the variety store line of business if the employer establishes an employee store that offers variety store items for sale to the employer's employees. See §1.132–7 for rules relating to employer-operated eating facilities, and see §1.132–1(e) for rules relating to employer-operated on-premises athletic facilities.

(iii) *Performance of substantial services in more than one line of business.* An employee who performs services in more than one of the employer's lines of business may only exclude no-additional-cost services and qualified employee discounts in the lines of business in which the employee performs substantial services.

(iv) *Performance of services that directly benefit more than one line of business*—(A) *In general.* An employee who performs substantial services that directly benefit more than one line of business of an employer is treated as performing substantial services in all such line of business. For example, an employee who maintains accounting records for an employer's three lines of business may receive qualified employee discounts in all three lines of business. Similarly, if an employee of a minor line of business of an employer that is significantly interrelated with a major line of business of the employer performs substantial services that directly benefit both the major and the minor lines of business, the employee is treated as performing substantial services for both the major and the minor lines of business.

(B) *Examples.* The rules provided in this paragraph (a)(1)(iv) are illustrated by the following examples:

*Example 1.* Assume that employees of units of an employer provide repair or financing services, or sell by catalog, with respect to retail merchandise sold by the employer. Such employees may be considered to perform substantial services for the retail merchandise line of business under paragraph (a)(1)(iv)(A) of this section.

*Example 2.* Assume that an employer operates a hospital and a laundry service. Assume further that some of the gross receipts of the laundry service line of business are from laundry services sold to customers other than the hospital employer. Only the employees of the laundry service who perform substantial services which directly benefit the hospital line of business (through the provision of laundry services to the hospital) will be treated as performing substantial services for the hospital line of business. Other employees of the laundry service line of business will not be treated as employees of the hospital line of business.

*Example 3.* Assume the same facts as in example (2), except that the employer also operates a chain of dry cleaning stores. Employees who perform substantial services which directly benefit the dry cleaning stores but who do not perform substantial services that directly benefit the hospital line of business will not be treated as performing substantial services for the hospital line of business.

(2) *Definition*—(i) *In general.* An employer's line of business is determined by reference to the Enterprise Standard Industrial Classification Manual (ESIC Manual) prepared by the Statistical Policy Division of the U.S. Office of Management and Budget. An employer is considered to have more than one line of business if the employer offers for sale to customers property or services in more than one two-digit code classification referred to in the ESIC Manual.

(ii) *Examples.* Examples of two-digit classifications are general retail merchandise stores; hotels and other lodging places; auto repair, services, and garages; and food stores.

(3) *Aggregation of two-digit classifications.* If, pursuant to paragraph (a)(2) of this section, an employer has more than one line of business, such lines of business will be treated as a single line of business where and to the extent that one or more of the following aggregation rules apply:

(i) If it is uncommon in the industry of the employer for any of the separate lines of business of the employer to be operated without the others, the separate lines of business are treated as one line of business.

(ii) If it is common for a substantial number of employees (other than those employees who work at the headquarters or main office of the employer) to perform substantial services for more than one line of business of the employer, so that determination of which employees perform substantial services for which line or lines of business would be difficult, then the separate lines of business of the employer in which such employees perform substantial services are treated as one line of business. For example, assume that an employer operates a delicatessen with an attached service counter at which food is sold for consumption on the premises. Assume further that most but not all employees work both at the delicatessen and at the service counter. Under the aggregation rule of this paragraph (a)(3)(ii), the delicatessen and the service counter are treated as one line of business.

(iii) If the retail operations of an employer that are located on the same premises are in separate lines of business but would be considered to be within one line of business under paragraph (a)(2) of this section if the merchandise offered for sale in such lines of business were offered for sale at a department store, then the operations are treated as one line of business. For example, assume that on the same premises an employer sells both women's apparel and jewelry. Because, if sold together at a department store, the operations would be part of the same line of business, the operations are treated as one line of business.

(b) *Grandfather rule for certain retail stores*—(1) *In general.* The line of business limitation may be relaxed under the special grandfather rule of this paragraph (b). Under this special grandfather rule, if—

(i) On October 5, 1983, at least 85 percent of the employees of one member of an affiliated group (as defined in section 1504 without regard to subsections (b)(2) and (b)(4) thereof) (''first member'') were entitled to receive employee discounts at retail department stores operated by another member of the affiliated group (''second member''), and

(ii) More than 50 percent of the previous year's sales of the affiliated group are attributable to the operation of retail department stores, then, for purposes of the exclusion from gross income of a qualified employee discount, the first member is treated as engaged in the same line of business as the second member (the opeator of the retail department stores). Therefore, employees of the first member of the affiliated group may exclude from income qualified employee discounts received at the retail department stores operated by the second member. However, employees of the second member of the affiliated group may not under this paragraph (b)(1) exclude any discounts received on property or services offered for sale to customers by the first member of the affiliated group.

(2) *Taxable year of affiliated group.* If not all of the members of an affiliated group have the same taxable year, the affiliated group must designate the 12-month period to be used in determining the ''previous year's sales'' (as referred to in the grandfather rule of this paragraph (b)). The 12-month period designated, however, must be used on a consistent basis.

(3) *Definition of ''sales.''* For purposes of this paragraph (b), the term ''sales'' means the gross receipts of an affiliated group, based upon the accounting methods used by its members.

(4) *Retired and disabled employees.* For purposes of this paragraph (b), an employee includes any individual who was, or whose spouse was, formerly employed by the first member of an affiliated group and who separated from service with the member by reason of retirement or disability if the second member of the group provided employee discounts to that individual on October 5, 1983.

(5) *Increase of employee discount.* If, after October 5, 1983, the employee discount described in this paragraph (b) is increased, the grandfather rule of this paragraph (b) does not apply to the amount of the increase. For example, if on January 1, 1989, the employee discount is increased from 10 percent to 15 percent, the grandfather rule will not apply to the additional 5 percent discount.

(c) *Grandfather rule for telephone service provided to predivestiture retirees.* All entities subject to the modified final judgment (as defined in section 559(c)(5) of the Tax Reform Act of 1984) shall be treated as a single employer engaged in the same line of business for purposes of determining whether telephone service provided to certain employees is a no-additional-cost service. The preceding sentence applies only in the case of an employee who by reason of retirement or disability separated before January 1, 1984, from the service of an entity subject to the modified final judgment. This paragraph (c) only applies to services provided to such employees as of January 1, 1984. For a special no-additional-cost service rule relating to such employees and such services, see § 1.132–2(a)(6).

(d) *Special rule for certain affiliates of commercial airlines*—(1) *General rule.* If a qualified affiliate is a member of an airline affiliated group and employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member, then, for purposes of applying § 1.132–2 (relating to no-additional-cost services with respect to such air transportation), such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(2) *''Airline affiliated group'' defined.* An ''airline affiliated group'' is an affiliated group (as defined in section 1504 (a)) one of whose members operates a commercial airline that provides air transportation to customers on a per-seat basis.

(3) *''Qualified affiliate'' defined.* A ''qualified affiliate'' is any corporation that is predominantly engaged in providing airline-related services. The term ''airline-related services'' means any of the following services provided in connection with air transportation:

(i) Catering,

(ii) Baggage handling,

(iii) Ticketing and reservations,

(iv) Flight planning and weather analysis, and

(v) Restaurants and gift shops located at an airport.

(e) *Grandfather rule for affiliated groups operating airlines.* The line of business limitation may be relaxed under the special grandfather rule of this paragraph (e). Under this special grandfather rule, if, as of September 12, 1984—

(1) An individual—

(i) Was an employee (within the meaning of § 1.132–1 (b)) of one member of an affiliated group (as defined in section 1504(a)) (''first corporation''), and

(ii) Was eligible for no-additional-cost services in the form of air transportation provided by another member of such affiliated group (''second corporation''),

(2) At least 50 percent of the individuals performing services for the first corporation were, or had been employees of, or had previously performed services for, the second corporation, and

(3) The primary business of the affiliated group was air transportation of passengers, then, for purposes of applying sections 132(a) (1) and (2), with respect to no-additional-cost services and qualified employee discounts provided after December 31, 1984, for that individual by the second corporation, the first corporation is treated as engaged in the same air transporation line of business as the second corporation. For purposes of the preceding sentence, an employee of the second corporation who is performing services for the first corporation is also treated as an employee of the first corporation.

(f) *Special rule for qualified air transportation organizations.* A qualified air transportation organization is treated as engaged in the line of business of providing air transportation with respect to any individual who performs services for the organization if those services are peformed primarily for persons engaged in providing air transportation, and are of a kind which (if performed on September 12, 1984) would qualify the individual for no-additional-cost services in the form of air transportation. The term ''qualified air transportation organization'' means any organization—

(1) If such organization (or a predecessor) was in existence on September 12, 1984,

(2) If such organization is—

(i) A tax-exempt organization under section(c)(6) whose membership is limited to entities engaged in the transportation by air of individuals or property for compensation or hire, or

(ii) Is a corporation all the stock of which is owned entirely by entities described in paragraph (f)(2)(i) of this section, and

(3) If such organization is operated in furtherance of the activities of its members or owners.

(g) *Relaxation of line of business requirement.* The line of business requirement may be relaxed under an elective grandfather rule provided in section 4977. For rules relating to the section 4977 election, see § 54.4977–1T.

(h) *Line of business requirement does not expand benefits eligible for exclusion.* The line of business requirement limits the benefits eligible for the no-additional-cost service and qualified employee discount exclusions to property or services provided by an employer to its customers in the ordinary course of the line of business of the employer in which the employee performs substantial services. The requirement is intended to ensure that employers do not offer, on a tax-free or reduced basis, property or services to employees that are not offered to the employer's customers, even if the property or services offered to the customers and the employees are within the same line of business (as defined in this section).

[T.D. 8256, 54 FR 28606, July 6, 1989]

### § 1.132–4T Line of business limitation—1985 through 1988 (temporary).

(a) *In general*—(1) *Applicability*—(i) *General rule.* A no-additional-cost service or qualified employee discount provided to an employee must be for property or services that are offered for sale to customers in the ordinary course of the same line of business in which the employee receiving the property or service performs substantial services. Thus, an employee who does not perform substantial services in a particular line of business of the employer may not exclude the value of services or employee discounts received on property or services in that line of business.

(ii) *Property and services sold to employees rather than customers.* Since the property or services must be offered for sale to customers in the ordinary course of the same line of business in which the employee performs substantial services, the line of business limitation is not satisfied if the employer's products or services are sold to employees of the employer, rather than to customers. Thus, for example, an employer in the banking line of business is not considered in the variety store line of business if the employer establishes an employee store that offers variety store items for sale to the employer's employees.

(iii) *Performance of substantial services in more than one line of business.* An employee who performs services in more than one of the employer's lines of business may only exclude no-additional-cost services and qualified employee discounts in the lines of business in which the employee performs substantial services.

(iv) *Performance of services that directly benefit more than one line of business*—(A) *In general.* An employee who performs substantial services that directly benefit more than one line of business of an employer is treated as performing substantial services in all such lines of business. For example, an employee who maintains accounting records for an employer's three lines of business may receive qualified employee discounts in all three lines of business.

(B) *Significantly interrelated minor line of business.* The employees of a minor line of business of an employer that is significantly interrelated with a major line of business of the employer who perform substantial services that directly benefit both the major and the minor lines of business are treated as employees of both the major and the minor lines of business. Employees of the minor line of business who do not perform substantial services which directly benefit the major line of business are not treated as employees of the major line of business. A minor line of business is significantly interrelated with a major line of business when, for example, the activity of the minor line of business is directly related to but is a minor part of the major line of business (such as laundry services provided at a hospital).

(C) *Examples.* The rules provided in this paragraph are illustrated in the following examples:

*Example 1.* Assume that employees of units of an employer provide repair or financing services, or sell by catalog, with respect to retail merchandise sold by the employer. Such employees may be considered as employees of the retail merchandise line of business under this paragraph (a)(1)(iv).

*Example 2.* Assume that an employer operates a hospital and a laundry service. Assume further that some of the gross receipts of the laundry service line of business are from laundry services sold to customers other than the hospital employer. Only the employees of the laundry service who perform substantial services which directly benefit the hospital line of business (through the provision of laundry services to the hospital) will be treated as employees of the hospital line of business. Other employees of the laundry service line of business will not be treated as employees of the hospital line of business.

*Example 3.* Assume the same facts as in example (2), except that the minor line of business also operates a chain of dry cleaning stores. Employees who perform substantial services which directly benefit the dry cleaning stores but who do not perform substantial services that directly benefit the hospital line of business will not be treated as employees of the hospital line of business.

(2) *Definition*—(i) *In general.* An employer's line of business is determined by reference to the Enterprise Standard Industrial Classification Manual (ESIC Manual) prepared by the Statistical Policy Division of the U.S. Office of Management and Budget. An employer is considered to have more than one line of business if the employer offers for sale to customers property or services in more than one two-digit code classification referred to in the ESIC Manual.

(ii) *Examples.* Examples of two-digit classifications are general retail merchandise stores; hotels and other lodging places; auto repair, services, and garages; and food stores.

(3) *Aggregation of two-digit classifications.* If, pursuant to paragraph (a)(2) of this section, an employer has more than one line of business, such lines of business will be treated as a single line of business where and to the extent that one or more of the following aggregation rules apply:

(i) If it is uncommon in the industry of the employer for any of the separate lines of business of the employer to be operated without the others, the separate lines of business are treated as one line of business.

(ii) If it is common for a substantial number of employees (other than those employees who work at the headquarters or main office of the employer) to perform substantial services for more than one line of business of the employer, so that determination of which employees perform substantial services for which line of business would be difficult, then the separate lines of business of the employer in which such employees perform substantial services are treated as one line of business. For example, assume that an employer operates a delicatessen with an attached service counter at which food is sold for consumption on the premises. Assume further that most but not all employees work both at the delicatessen and at the service counter. The delicatessen and the service counter are treated as one line of business.

(iii) If the retail operations of an employer that are located on the same premises are in separate lines of business but would be considered to be within one line of business under paragraph (a)(2) of this section if the merchandise offered for sale in such lines of business were offered for sale at a department store, then the operations are treated as one line of business. For example, assume that on the same premises an employer sells both women's apparel and jewelry. Since, if sold together at a department store, the operations would be part of the same line of business, the operations are treated as one line of business.

(b) *Grandfather rule for certain retail stores*—(1) *In general.* The line of business limitation may be relaxed under a special grandfather rule. If—

(i) On October 5, 1983, 85 percent of the employees of one member of an affiliated group (as defined in section 1504 without regard to subsections (b)(2) and (b)(4) thereof) were entitled to employee discounts at retail department stores operated by another member of the affiliated group, and

(ii) More than 50 percent of the current year's sales of the affiliated group are attributable to the operation of retail department stores,

then for purposes of the exclusion from gross income of a qualified employee discount, the first member is treated as engaged in the same line of business as the second member (the operator of the retail department stores). Therefore, employees of the first member of the affiliated group may exclude qualified employee discounts received at the retail department stores operated by the second member. However, employees of the second member of the affiliated group may not exclude any discounts received on property or services offered for sale to customers by the first member of the affiliated group.

(2) *Taxable year of affiliated group.* If all of the members do not have the same taxable year, the affiliated group must designate the 12-month period to be used in determining the ''current year's sales'' (as referred to in this paragraph (b)). The 12-month period designated, however, must be used consistently.

(3) *Definition of ''sales''.* For purposes of this paragraph (b), the term ''sales'' means the gross receipts of the affiliated group, based upon the accounting methods used by its members.

(4) *Retired and disabled employees.* For purposes of this paragraph (b), an employee includes any individual who was, or whose spouse was, formerly employed by the first member of the affiliated group and who separated from service with the member by reason of retirement or disability if the second member of the group provided employee discounts to such individuals on October 5, 1983.

(5) *Increase of employee discount.* If, after October 5, 1983, the employee discount described in this paragraph (b) is increased, the grandfather rule of this paragraph (b) does not apply to the amount of the increase. For example, if on January 1, 1985, the employee discount is increased from 10 percent to 15 percent, the grandfather rule will not apply to the additional five percent discount.

(c) *Relaxation of line of business requirement.* The line of business requirement may be relaxed under an elective grandfather rule provided in section 4977. For rules relating to the section 4977 election, see §54.4977–1.

[T.D. 8063, 50 FR 52301, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28600, July 6, 1989]

## § 1.132–5 Working condition fringes.

(a) *In general*—(1) *Definition.* Gross income does not include the value of a working condition fringe. A ''working condition fringe'' is any property or service provided to an employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowable as a deduction under section 162 or 167.

(i) A service or property offered by an employer in connection with a flexible spending account is not excludable from gross income as a working condition fringe. For purposes of the preceding sentence, a flexible spending account is an agreement (whether or not written) entered into between an employer and an employee that makes available to the employee over a time period a certain level of unspecified non-cash benefits with a pre-determined cash value.

(ii) If, under section 274 or any other section, certain substantiation requirements must be met in order for a deduction under section 162 or 167 to be allowable, then those substantiation requirements apply when determining whether a property or service is excludable as a working condition fringe.

(iii) An amount that would be deductible by the employee under a section other than section 162 or 167, such as section 212, is not a working condition fringe.

(iv) A physical examination program provided by the employer is not excludable as a working condition fringe even if the value of such program might be deductible to the employee under section 213. The previous sentence applies without regard to whether the employer makes the program mandatory to some or all employees.

(v) A cash payment made by an employer to an employee will not qualify as a working condition fringe unless the employer requires the employee to—

(A) Use the payment for expenses in connection with a specific or pre-arranged activity or undertaking for which a deduction is allowable under section 162 or 167,

(B) Verify that the payment is actually used for such expenses, and

(C) Return to the employer any part of the payment not so used.

(vi) The limitation of section 67(a) (relating to the two-percent floor on miscellaneous itemized deductions) is not considered when determining the amount of a working condition fringe.

For example, assume that an employer provides a $1,000 cash advance to Employee A and that the conditions of paragraph (a)(1)(v) of this section are not satisfied. Even to the extent A uses the allowance for expenses for which a deduction is allowable under section 162 and 167, because such cash payment is not a working condition fringe, section 67(a) applies. The $1,000 payment is includible in A's gross income and subject to income and employment tax withholding. If, however, the conditions of paragraph (a)(1)(v) of this section are satisfied with respect to the payment, then the amount of A's working condition fringe is determined without regard to section 67(a). The $1,000 payment is excludible from A's gross income and not subject to income and employment tax reporting and withholding.

(2) *Trade or business of the employee*—(i) *General.* If the hypothetical payment for a property or service would be allowable as a deduction with respect to a trade or business of an employee other than the employee's trade or business of being an employee of the employer, it cannot be taken into account for purposes of determining the amount, if any, of the working condition fringe.

(ii) *Examples.* The rule of paragraph (a)(2)(i) of this section may be illustrated by the following examples:

*Example 1.* Assume that, unrelated to company X's trade or business and unrelated to employee A's trade or business of being an employee of company X, A is a member of the board of directors of company Y. Assume further that company X provides A with air transportation to a company Y board of director's meeting. A may not exclude from gross income the value of the air transportation to the meeting as a working condition fringe. A may, however, deduct such amount under section 162 if the section 162 requirements are satisfied. The result would be the same whether the air transportation was provided in the form of a flight on a commercial airline or a seat on a company X airplane.

*Example 2.* Assume the same facts as in example (1) except that A serves on the board of directors of company Z and company Z regularly purchases a significant amount of goods and services from company X. Because of the relationship between Company Z and A's employer, A's membership on Company Z's board of directors is related to A's trade or business of being an employee of Company X. Thus, A may exclude from gross income the value of air transportation to board meetings as a working condition fringe.

*Example 3.* Assume the same facts as in example (1) except that A serves on the board of directors of a charitable organization. Assume further that the service by A on the charity's board is substantially related to company X's trade or business. In this case, A may exclude from gross income the value of air transportation to board meetings as a working condition fringe.

*Example 4.* Assume the same facts as in example (3) except that company X also provides A with the use of a company X conference room which A uses for monthly meetings relating to the charitable organization. Also assume that A uses company X's copy machine and word processor each month in connection with functions of the charitable organization. Because of the substantial business benefit that company X derives from A's service on the board of the charity, A may exclude as a working condition fringe the value of the use of company X property in connection with the charitable organization.

(b) *Vehicle allocation rules*—(1) *In general*—(i) *General rule.* In general, with respect to an employer-provided vehicle, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the availability of the vehicle. For example, assume that the value of the availability of an employer-provided vehicle for a full year is $2,000, without regard to any working condition fringe (*i.e.*, assuming all personal use). Assume Further that the employee drives the vehicle 6,000 miles for his employer's business and 2,000 miles for reasons other than the employer's business. In this situation, the value of the working condition fringe is $2,000 multiplied by a fraction, the numerator of which is the business-use mileage (6,000 miles) and the denominator of which is the total mileage (8,000 miles). Thus, the value of the working condition fringe is $1,500. The total amount includible in the employee's gross income on account of the availability of the vehicle is $500 ($2,000 − $1,500). For purposes of this section, the term ''vehicle'' has the meaning given the term in §1.61–21(e)(2). Generally, when determining the amount of an employee's working condition fringe, miles accumulated on the vehicle by all employees of the employer during the period in which the vehicle is available to the employee are considered. For example, assume that during the year in which the vehicle is available to the employee in the above example, other employees accumulate 2,000 additional miles on the vehicle (while the employee is not in the automobile). In this case, the value of the working condition fringe is $2,000 multiplied by a fraction, the numerator of which is the business-use mileage by the employee (including all mileage (business and personal) accumulated by other employees) (8,000 miles) and the denominator of which is the total mileage (including all mileage accumulated by other employees) (10,000 miles). Thus, the value of the working condition fringe is $1,600; the total amount includible in the employee's gross income on account of the availability of the vehicle is $400 ($2,000 − $1,600). If, however, substantially all of the use of the automobile by other employees in the employer's business is limited to a certain period, such as the last three months of the year, the miles driven by the other employees during that period would not be considered when determining the employee's working condition fringe exclusion. Similarly, miles driven by other employees are not considered if the pattern of use of the employer-provided automobiles is designed to reduce Federal taxes. For example, assume that an employer provides employees A and B each with the availability of an employer-provided automobile and that A uses the automobile assigned to him 80 percent for the employer's business and that B uses the automobile assigned to him 30 percent for the employer's business. If A and B alternate the use of their assigned automobiles each week in such a way as to achieve a reduction in federal taxes, then the employer may count only miles placed on the automobile by the employee to whom the automobile is assigned when determining each employee's working condition fringe.

(ii) *Use by an individual other than the employee.* For purposes of this section, if the availability of a vehicle to an individual would be taxed to an employee, use of the vehicle by the individual is included in references to use by the employee.

(iii) *Provision of an expensive vehicle for personal use.* If an employer provides an employee with a vehicle that an employee may use in part for personal purposes, there is no working condition fringe exclusion with respect to the personal miles driven by the employee; if the employee paid for the availability of the vehicle, he would not be entitled to deduct under section 162 or 167 any part of the payment attributable to personal miles. The amount of the inclusion is not affected by the fact that the employee would have chosen the availability of a less expensive vehicle. Moreover, the result is the same even though the decision to provide an expensive rather than an inexpensive vehicle is made by the employer for bona fide noncompensatory business reasons.

(iv) *Total value inclusion.* In lieu of excluding the value of a working condition fringe with respect of an automobile, an employer using the automobile lease valuation rule of §1.61–21(d) may include in an employee's gross income the entire Annual Lease Value of the automobile. Any deduction allowable to the employee under section 162 or 167 with respect to the automobile may be taken on the employee's income tax return. The total inclusion rule of this paragraph (b)(1)(iv) is not available if the employer is valuing the use or availability of a vehicle under general valuation principles or a special valuation rule other than the automobile lease valuation rule. See §§1.162–25 and 1.162–25T for rules relating to the employee's deduction.

(v) *Shared usage.* In calculating the working condition fringe benefit exclusion with respect to a vehicle provided for use by more than one employee, an employer shall compute the working condition fringe in a manner consistent with the allocation of the value of the vehicle under section 1.61–21(c)(2)(ii)(B).

(2) *Use of different employer-provided vehicles.* The working condition fringe exclusion must be applied on a vehicle-by-vehicle basis. For example, assume that automobile Y is available to employee D for 3 days in January and for

5 days in March, and automobile Z is available to D for a week in July. Assume further that the Daily Lease Value, as defined in §1.61–21(d)(4)(ii), of each automobile is $50. For the eight days of availability of Y in January and March, D uses Y 90 percent for business (by mileage). During July, D uses Z 60 percent for business (by mileage). The value of the working condition fringe is determined separately for each automobile. Therefore, the working condition fringe for Y is $360 ($400×.90) leaving an income inclusion of $40. The working condition fringe for Z is $210 ($350×.60), leaving an income inclusion of $140. If the value of the availability of an automobile is determined under the Annual Lease Value rule for one period and Daily Lease Value rule for a second period (see §1.61–21(d)), the working condition fringe exclusion must be calculated separately for the two periods.

(3) *Provision of a vehicle and chauffeur services*—(i) *General rule.* In general, with respect to the value of chauffeur services provided by an employer, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 and 167 if the employee paid for the chauffeur services. The working condition fringe with respect to a chauffeur is determined separately from the working condition fringe with respect to the vehicle. An employee may exclude from gross income the excess of the value of the chauffeur services over the value of the chauffeur services for personal purposes (such as commuting) as determined under §1.61–21(b)(5). See §1.61–21(b)(5) for additional rules and examples concerning the valuation of chauffeur services. See §1.132–5(m)(5) for rules relating to an exclusion from gross income for the value of bodyguard/chauffeur services. When determining whether miles placed on the vehicle are for the employer's business, miles placed on the vehicle by a chauffeur between the chauffeur's residence and the place at which the chauffeur picks up (or drops off) the employee are with respect to the employee (but not the chauffeur) considered to be miles placed on the vehicle for the employer's business and thus eligible for the working condition fringe exclusion. Thus, because miles placed on the vehicle by a chauffeur between the chauffeur's residence and the place at which the chauffeur picks up (or drops off) the employee are not considered business miles with respect to the chauffeur, the value of the availability of the vehicle for commuting is includible in the gross income of the chauffeur. For general and special rules concerning the valuation of the use of employer-provided vehicles, see paragraphs (b) through (f) of §1.61–21.

(ii) *Examples.* The rules of paragraph (b)(3)(i) of this section are illustrated by the following examples:

*Example 1.* Assume that an employer makes available to an employee an automobile and a chauffeur. Assume further that the value of the chauffeur services determined in accordance with §1.61–21 is $30,000 and that the chauffeur spends 30 percent of each workday driving the employee for personal purposes. There may be excluded from the employee's income 70 percent of $30,000, or $21,000, leaving an income inclusion with respect to the chauffeur services of $9,000.

*Example 2.* Assume that the value of the availability of an employer-provided vehicle for a year is $4,850 and that the value of employer-provided chauffeur services with respect to the vehicle for the year is $20,000. Assume further that 40 percent of the miles placed on the vehicle are for the employer's business and that 60 percent are for other purposes. In addition, assume that the chauffeur spends 25 percent of each workday driving the employee for personal purposes (*i.e.*, 2 hours). The value of the chauffeur services includible in the employee's income is 25 percent of $20,000, or $5,000. The excess of $20,000 over $5,000 or $15,000 is excluded from the employee's income as a working condition fringe. The amount excludable as a working condition fringe with respect to the vehicle is 40 percent of $4,850, or $1,940 and the amount includible is $4,850 − $1,940, or $2,910.

(c) *Applicability of substantiation requirements of sections 162 and 274*(d)—(1) *In general.* The value of property or services provided to an employee may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, unless the applicable substantiation requirements of either section 274(d) or section 162 (whichever is applicable) and the regulations thereunder are satisfied. The substantiation requirements of section 274(d) apply to an employee even if the requirements of section 274 do not apply to the employee's employer for deduction purposes (such as when the employer is a tax-exempt organization or a governmental unit).

(2) *Section 274(d) requirements.* The substantiation requirements of section 274(d) are satisfied by ''adequate records or sufficient evidence corroborating the [employee's] own statement''. Therefore, such records or evidence provided by the employee, and relied upon by the employer to the extent permitted by the regulations promulgated under section 274(d), will be sufficient to substantiate a working condition fringe exclusion.

(d) *Safe harbor substantiation rules*—(1) *In general.* Section 1.274–6T provides that the substantiation requirements of section 274(d) and the regulations thereunder may be satisfied, in certain circumstances, by using one or more of the safe harbor rules prescribed in §1.274–6T. If the employer uses one of the safe harbor rules prescribed in §1.274–6T during a period with respect to a vehicle (as defined in §1.61–21(e)(2)), that rule must be used by the employer to substantiate a working condition fringe exclusion with respect to that vehicle during the period. An employer that is exempt from Federal income tax may still use one of the safe harbor rules (if the requirements of that section are otherwise met during a period) to substantiate a working condition fringe exclusion with respect to a vehicle during the period. If the employer uses one of the methods prescribed in §1.274–6T during a period with respect to an employer-provided vehicle, that method may be used by an employee to substantiate a working condition fringe exclusion with respect to the same vehicle during the period, as long as the employee includes in gross income the amount allocated to the employee pursuant to §1.274–6T and this section. (See §1.61–21(c)(2) for other rules concerning when an employee must include in income the amount determined by the employer.) If, however, the employer uses the safe harbor rule prescribed in §1.274–6T(a) (2) or (3) and the employee without the employer's knowledge uses the vehicle for purposes other than de minimis personal use (in the case of the rule prescribed in §1.274–6T(a)(2)), or for purposes other than de minimis personal use and commuting (in the case of the rule prescribed in §1.274–6T(a)(3)), then the employees must include an additional amount in income for the unauthorized use of the vehicle.

(2) *Period for use of safe harbor rules.* The rules prescribed in this paragraph (d) assume that the safe harbor rules prescribed in §1.274–6T are used for a one-year period. Accordingly, references to the value of the availability of a vehicle, amounts excluded as a working condition fringe, etc., are based on a one-year period. If the safe harbor rules prescribed in §1.274–6T are used for a period of less than a year, the amounts referred to in the previous sentence must be adjusted accordingly. For purposes of this section, the term ''personal use'' has the same meaning as prescribed in §1.274–6T (e)(5).

(e) *Safe harbor substantiation rule for vehicles not used for personal purposes.* For a vehicle described in §1.274–6T(a)(2) (relating to certain vehicles not used for personal purposes), the working condition fringe exclusion is equal to the value of the availability of the vehicle if the employer uses the method prescribed in §1.274–6T(a)(2).

(f) *Safe harbor substantiation rule for vehicles not available to employees for personal use other than commuting.* For a vehicle described in §1.274–6T(a)(3) (relating to certain vehicles not used for personal purposes other than commuting), the working condition fringe exclusion is equal to the value of the availability of the vehicle for purposes other than commuting if the employer uses the method prescribed in §1.274–6T(a)(3). This rule applies only if the special rule for valuing commuting use, as prescribed in §1.61–21(f), is used and the amount determined under the special rule is either included in the employee's income or reimbursed by the employee.

(g) *Safe harbor substantiation rule for vehicles used in connection with the business of farming that are available to employees for personal use*—(1) *In general.* For a vehicle described in §1.274–6T(b) (relating to certain vehicles used in connection with the business of farming), the working condition fringe exclusion is calculated by multiplying the value of the availability of the vehicle by 75 percent.

(2) *Vehicles available to more than one individual.* If the vehicle is available to more than one individual, the employer must allocate the gross income inclusion attributable to the vehicle (25 percent of the value of the availability of the vehicle) among the employees (and other individuals whose use would not be attributed to an employee) to whom the vehicle was available. This allocation must be done in a reasonable manner to reflect the personal use of the vehicle by the individuals. An amount that would be allocated to a sole proprietor reduces the amounts that may be allocated to employees but is otherwise to be disregarded for purposes of this paragraph (g). For purposes of this paragraph (g), the value of the availability of a vehicle may be calculated as if the vehicle were available to only one employee continuously and without regard to any working condition fringe exclusion.

(3) *Examples.* The following examples illustrate a reasonable allocation of gross income with respect to an employer-provided vehicle between two employees:

*Example 1.* Assume that two farm employees share the use of a vehicle that for a calendar year is regularly used directly in connection with the business of farming and qualifies for use of the rule in §1.274–6T(b). Employee A uses the vehicle in the morning directly in connection with the business of farming and employee B uses the vehicle in the afternoon directly in connection with the business of farming. Assume further that employee B takes the vehicle home in the evenings and on weekends. The employer should allocate all the income attributable to the availability of the vehicle to employee B.

*Example 2.* Assume that for a calendar year, farm employees C and D share the use of a vehicle that is regularly used directly in connection with the business of farming and qualifies for use of the rule in §1.2.4–6T(b). Assume further that the employees alternate taking the vehicle home in the evening and alternate the availability of the vehicle for personal purposes on weekends. The employer should allocate the income attributable to the availability of the vehicle for personal use (25 percent of the value of the availability of the vehicle) equally between the two employees.

*Example 3.* Assume the same facts as in example (2) except that C is the sole proprietor of the farm. Based on these facts, C should allocate the same amount of income to D as was allocated to D in example (2). No other income attributable to the availability of the vehicle for personal use should be allocated.

(h) *Qualified nonpersonal use vehicles*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in §1.274–5(k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in §1.274–5(k)(3) through (8), the use of the vehicle conforms to the requirements of paragraphs (k)(3) through (8).

(2) *Shared usage of qualified nonpersonal use vehicles.* In general, a working condition fringe under this paragraph (h) is available to the driver and all passengers of a qualified nonpersonal use vehicle. However, a working condition fringe under this paragraph (h) is available only with respect to the driver and not with respect to any passengers of a qualified nonpersonal use vehicle described in §1.274–5(k)(2)(ii)(L) or (P).

(i) [Reserved]

(j) *Application of section 280F.* In determining the amount, if any, of an employee's working condition fringe, section 280F and the regulations thereunder do not apply. For example, assume that an employee has available for a calendar year an employer-provided automobile with a fair market value of $28,000. Assume further that the special rule provided in §1.61–21(d) is used yielding an Annual Lease Value, as defined in §1.61–21(d), of $7,750, and that all of the employee's use of the automobile is for the employer's business. The employee would be entitled to exclude as a working condition fringe the entire Annual Lease Value, despite the fact that if the employee paid for the availability of the automobile, an income inclusion would be required under §1.280F–6(d)(1). This paragraph (j) does not affect the applicability of section 280F to the employer with respect to such employer-provided automobile, nor does it affect the applicability of section 274 to either the employer or the employee. For rules concerning substantiation of an employee's working condition fringe, see paragraph (c) of this section.

(k) *Aircraft allocation rule.* In general, with respect to a flight on an employer-provided aircraft, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the flight on the aircraft. For example, if employee P and P's spouse fly on P's employer's airplane primarily for business reasons of P's employer so that P could deduct the expenses relating to the trip to the extent of P's payments, the value of the flights is excludable from gross income as a working condition fringe. However, if P's children accompany P on the trip primarily for personal reasons, the value of the flights by P's children are includible in P's gross income. See §1.61–21 (g) for special rules for valuing personal flights on employer-provided aircraft.

(l) [Reserved]

(m) *Employer-provided transportation for security concerns*—(1) *In general.* The amount of a working condition fringe exclusion with respect to employer-provided transportation is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the transportation. Generally, if an employee pays for transportation taken for primarily personal purposes, the employee may not deduct any part of the amount paid. Thus, the employee may not generally exclude the value of employer-provided transportation as a working condition fringe if such transportation is primarily personal. If, however, for bona fide business-oriented security concerns, the employee purchases transportation that provides him or her with additional security, the employee may generally deduct the excess of the amount actually paid for the transportation over the amount the employee would have paid for the same mode of transportation absent the bona fide business-oriented security concerns. This is the case whether or not the employee would have taken the same mode of transportation absent the bona fide business-oriented security concerns. With respect to a vehicle, the phrase ''the same mode of transportation'' means use of the same vehicle without the additional security aspects, such as bulletproof glass. With respect to air transportation, the phrase ''the same mode of transportation'' means comparable air transportation. These same rules apply to the determination of an employee's working condition fringe exclusion. For example, if an employer provides an employee with a vehicle for commuting and, because of bona fide business-oriented security concerns, the vehicle is specially designed for security, then the employee may exclude from gross income the value of the special security design as a working condition fringe. The employee may not exclude the value of the commuting from income as a working condition fringe because commuting is a nondeductible personal expense. However, if an independent security study meeting the requirements of paragraph (m)(2)(v) of this section has been performed with respect to a government employee, the government employee may exclude the value of the personal use (other than commuting) of the employer-provided vehicle that the security study determines to be reasonable and necessary for local transportation. Similarly, if an employee travels on a personal trip in an employer-provided aircraft for bona fide business-oriented security concerns, the employee may exclude the excess, if any, of the value of the flight over the amount the employee would have paid for the same mode of transportation, but for the bona fide business-oriented security concerns. Because personal travel is a nondeductible expense, the employee may not exclude the total value of the trip as a working condition fringe.

(2) *Demonstration of bona fide business-oriented security concerns*—(i) *In general.* For purposes of this paragraph (m), a bona fide business-oriented security concern exists only if the facts and circumstances establish a specific basis for concern regarding the safety of the employee. A generalized concern for an employee's safety is not a bona fide business-oriented security concern. Once a bona fide business-oriented security concern is determined to exist with respect to a particular employee, the employer must periodically evaluate the situation for purposes of determining whether the bona fide business-

oriented security concern still exists. Example of factors indicating a specific basis for concern regarding the safety of an employee are—

(A) A threat of death or kidnapping of, or serious bodily harm to, the employee or a similarly situated employee because of either employee's status as an employee of the employer; or

(B) A recent history of violent terrorist activity (such as bombings) in the geographic area in which the transportation is provided, unless that activity is focused on a group of individuals which does not include the employee (or a similarly situated employee of an employer), or occurs to a significant degree only in a location within the geographic area where the employee does not travel.

(ii) *Establishment of overall security program.* Notwithstanding anything in paragraph (m)(2)(i) of this section to the contrary, no bona fide business-oriented security concern will be deemed to exist unless the employee's employer establishes to the satisfaction of the Commissioner that an overall security program has been provided with respect to the employee involved. An overall security program is deemed to exist if the requirements of paragraph (m)(2)(iv) of this section are satisfied (relating to an independent security study).

(iii) *Overall security program*—(A) *Defined.* An overall security program is one in which security is provided to protect the employee on a 24-hour basis. The employee must be protected while at the employee's residence, while commuting to and from the employee's workplace, and while at the employee's workplace. In addition, the employee must be protected while traveling both at home and away from home, whether for business or personal purposes. An overall security program must include the provision of a bodyguard/chauffeur who is trained in evasive driving techniques; an automobile specially equipped for security; guards, metal detectors, alarms, or similar methods of controlling access to the employee's workplace and residence; and, in appropriate cases, flights on the employer's aircraft for business and personal reasons.

(B) *Application.* There is no overall security program when, for example, security is provided at the employee's workplace but not at the employee's residence. In addition, the fact that an employer requires an employee to travel on the employer's aircraft, or in an employer-provided vehicle that contains special security features, does not alone constitute an overall security program. The preceding sentence applies regardless of the existence of a corporate or other resolution requiring the employee to travel in the employer's aircraft or vehicle for personal as well as business reasons.

(iv) *Effect of an independent security study.* An overall security program with respect to an employee is deemed to exist if the conditions of this paragraph (m)(2)(iv) are satisfied:

(A) A security study is performed with respect to the employer and the employee (or a similarly situated employee of the employer) by an independent security consultant;

(B) The security study is based on an objective assessment of all facts and circumstances;

(C) The recommendation of the security study is that an overall security program (as defined in paragraph (m)(2)(iii) of this section) is not necessary and the recommendation is reasonable under the circumstances; and

(D) The employer applies the specific security recommendations contained in the security study to the employee on a consistent basis.

The value of transportation-related security provided pursuant to a security study that meets the requirements of this paragraph (m)(2)(iv) may be excluded from income if the security study conclusions are reasonable and, but for the bona fide business-oriented security concerns, the employee would not have had such security. No exclusion from income applies to security provided by the employer that is not recommended in the security study. Security study conclusions may be reasonable even if, for example, it is recommended that security be limited to certain geographic areas, as in the case in which air travel security is provided only in certain foreign countries.

(v) *Independent security study with respect to government employees.* For purposes of establishing the existence of an overall security program under paragraph (m)(2)(ii) of this section with respect to a particular government employee, a security study conducted by the government employer (including an agency or instrumentality thereof) will be treated as a security study pursuant to paragraph (m)(2)(iv) of this section if, in lieu of the conditions of paragraphs (m)(2)(iv)(A) through (D) of this section, the following conditions are satisfied:

(A) The security study is conducted by a person expressly designated by the government employer as having the responsibility and independent authority to determine both the need for employer-provided security and the appropriate protective services in response to that determination;

(B) The security study is conducted in accordance with written internal procedures that require an independent and objective assessment of the facts and circumstances, such as the nature of the threat to the employee, the appropriate security response to that threat, an estimate of the length of time protective services will be necessary, and the extent to which employer-provided transportation may be necessary during the period of protection;

(C) With respect to employer-provided transportation, the security study evaluates the extent to which personal use, including commuting, by the employee and the employee's spouse and dependents may be necessary during the period of protection and makes a recommendation as to what would be considered reasonable personal use during that period; and

(D) The employer applies the specific security recommendations contained in the study to the employee on a consistent basis.

(3) *Application of security rules to spouses and dependents*—(i) *In general.* If a bona fide business-oriented security concern exists with respect to an employee (because, for example, threats are made on the life of an employee), the bona fide business-oriented security concern is deemed to exist with respect to the employee's spouse and dependents to the extent provided in this paragraph (m)(3).

(ii) *Certain transportation.* If a working condition fringe exclusion is available under this paragraph (m) for transportation in a vehicle or aircraft provided for a bona fide business-oriented security concern with respect to an employee, the requirements of this paragraph (m) are deemed to be satisfied with respect to transportation in the same vehicle or aircraft provided at the same time to the employee's spouse and dependent children.

(iii) *Other.* Except as provided in paragraph (m)(3)(ii) of this section, a bona fide business oriented security concern is deemed to exist for the spouse and dependent children of the employer only if the requirements of paragraph (m)(2) (iii) or (iv) of this section are applied independently to such spouse and dependent children.

(iv) *Spouses and dependents of government employees.* The security rules of this paragraph (m)(3) apply to the spouse and dependents of a government employee. However, the value of local vehicle transportation provided to the government employee's spouse and dependents for personal purposes, other than commuting, during the period that a bona fide business-oriented security concern exists with respect to the government employee will not be included in the government employee's gross income if the personal use is determined to be reasonable and necessary by the security study described in paragraph (m)(2)(v) of this section.

(4) *Working condition safe harbor for travel on employer-provided aircraft.* Under the safe harbor rule of this paragraph (m)(4), if, for a bona fide business-oriented security concern, the employer requires that an employee travel on an employer-provided aircraft for a personal trip, the employer and the employee may exclude from the employee's gross income, as a working condition fringe, the excess value of the aircraft trip over the safe harbor airfare without having to show what method of transportation the employee would have flown but for the bona fide business-oriented security concern. For purposes of the safe harbor rule of this paragraph (m)(4), the value of the safe harbor airfare is determined under the

non-commercial flight valuation rule of § 1.61–21(g) (regardless of whether the employer or employee elects to use such valuation rule) by multiplying an aircraft multiple of 200-percent by the applicable cents-per-mile rates and the number of miles in the flight and then adding the applicable terminal charge. The value of the safe harbor airfare determined under this paragraph (m)(4) must be included in the employee's income (to the extent not reimbursed by the employee) regardless of whether the employee or the employer uses the special valuation rule of § 1.61–21(g). The excess of the value of the aircraft trip over this amount may be excluded from gross income as a working condition fringe. If, for a bona fide business-oriented security concern, the employer requires that an employee's spouse and dependents travel on an employer-provided aircraft for a personal trip, the special rule of this paragraph (m)(4) is available to exclude the excess value of the aircraft trips over the safe harbor airfares.

(5) *Bodyguard/chauffeur provided for a bona fide business-oriented security concern.* If an employer provides an employee with vehicle transportation and a bodyguard/chauffeur for a bona fide business-oriented security concern, and but for the bona fide business-oriented security concern the employee would not have had a bodyguard or a chauffeur, then the entire value of the services of the bodyguard/chauffeur is excludable from gross income as a working condition fringe. For purposes of this section, a bodyguard/chauffeur must be trained in evasive driving techniques. An individual who performs services as a driver for an employee is not a bodyguard/chauffeur if the individual is not trained in evasive driving techniques. Thus, no part of the value of the services of such an individual is excludable from gross income under this paragraph (m)(5). (See paragraph (b)(3) of this section for rules relating to the determination of the working condition fringe exclusion for chauffeur services.)

(6) *Special valuation rule for government employees.* If transportation is provided to a government employee for commuting during the period that a bona fide business-oriented security concern under § 1.132–5(m) exists, the commuting use may be valued by reference to the values set forth in § 1.61–21(e)(1)(i) or (f)(3) (vehicle cents-per-mile or commuting valuation of $1.50 per one-way commute, respectively) without regard to the additional requirements contained in § 1.61–21 (e) or (f) and is deemed to have met the requirements of § 1.61–21(c).

(7) *Government employer and employee defined.* For purposes of this paragraph (m), ''government employer'' includes any Federal, State, or local government unit, and any agency or instrumentality thereof. A ''government employee'' is any individual who is employed by the government employer.

(8) *Examples.* The provisions of this paragraph (m) may be illustrated by the following examples:

*Example 1.* Assume that in response to several death threats on the life of A, the president of X a multinational company, X establishes an overall security program for A, including an alarm system at A's home and guards at A's workplace, the use of a vehicle that is specially equipped with alarms, bulletproof glass, and armor plating, and a bodyguard/chauffeur. Assume further that A is driven for both personal and business reasons in the vehicle. Also, assume that but for the bona fide business-oriented security concerns, no part of the overall security program would have been provided to A. With respect to the transportation provided for security reasons, A may exclude as a working condition fringe the value of the special security features of the vehicle and the value attributable to the bodyguard/chauffeur. Thus, if the value of the specially equipped vehicle is $40,000, and the value of the vehicle without the security features is $25,000, A may determine A's inclusion in income attributable to the vehicle as if the vehicle were worth $25,000. A must include in income the value of the availability of the vehicle for personal use.

*Example 2.* Assume that B is the chief executive officer of Y, a multinational corporation. Assume further that there have been kidnapping attempts and other terrorist activities in the foreign countries in which B performs services and that at least some of such activities have been directed against B or similarly situated employees. In response to these activities, Y provides B with an overall security program, including an alarm system at B's home and bodyguards at B's workplace, a bodyguard/chauffeur, and a vehicle specially designed for security during B's overseas travels. In addition, assume that Y requires B to travel in Y's airplane for business and personal trips taken to, from, and within these foreign countries. Also, assume that but for bona fide business-oriented security concerns, no part of the overall security program would have been provided to B. B may exclude as a working condition fringe the value of the special security features of the automobile and the value attributable to the bodyguards and the bodyguard/chauffeur. B may also exclude the excess, if any, of the value of the flights over the amount A would have paid for the same mode of transportation but for the security concerns. As an alternative to the preceding sentence, B may use the working condition safe harbor described in paragraph (m)(4) of this section and exclude as a working condition fringe the excess, if any, of the value of personal flights in the Y airplane over the safe harbor airfare determined under the method described in paragraph (m)(4) of this section. If this alternative is used, B must include in income the value of the availability of the vehicle for personal use and the value of the safe harbor.

*Example 3.* Assume the same facts as in example (2) except that Y also requires B to travel in Y's airplane within the United States, and provides B with a chauffeur-driven limousine for business and personal travel in the United States. Assume further that Y also requires B's spouse and dependents to travel in Y's airplane for personal flights in the United States. If no bona fide business-oriented security concern exists with respect to travel in the United States, B may not exclude from income any portion of the value of the availability of the chauffeur or limousine for personal use in the United States. Thus, B must include in income the value of the availability of the vehicle and chauffeur for personal use. In addition, B may not exclude any portion of the value attributable to personal flights by B or B's spouse and dependents on Y's airplane. Thus, B must include in income the value attributable to the personal use of Y's airplane. See § 1.61–21 for rules relating to the valuation of an employer-provided vehicle and chauffeur, and personal flights on employer-provided airplanes.

*Example 4.* Assume that company Z retains an independent security consultant to perform a security study with respect to its chief executive officer. Assume further that, based on an objective assessment of the facts and circumstances, the security consultant reasonably recommends that 24-hour protection is not necessary but that the employee be provided security at his workplace and for ground transportation, but not for air transportation. If company Z follows the recommendations on a consistent basis, an overall security program will be deemed to exist with respect to the workplace and ground transportation security only.

*Example 5.* Assume the same facts as in example (4) except that company Z only provides the employee security while commuting to and from work, but not for any other ground transportation. Because the recommendations of the independent security study are not applied on a consistent basis, an overall security program will not be deemed to exist. Thus, the value of commuting to and from work is not excludable from income. However, the value of a bodyguard with professional security training who does not provide chauffeur or other personal services to the employee or any member of the employee's family may be excludable as a working condition fringe if such expense would be otherwise allowable as a deduction by the employee under section 162 or 167.

*Example 6.* J is a United States District Judge. At the beginning of a 3-month criminal trial in J's court, a member of J's family receives death threats. M, the division (within government agency W) responsible for evaluating threats and providing protective services to the Federal judiciary, directs its threat analysis unit to conduct a security study with respect to J and J's family. The study is conducted pursuant to internal written procedures that require an independent and objective assessment of any threats to members of the Federal judiciary and their families, a statement of the requisite security response, if any, to a particular threat (including the form of transportation to be furnished to the employee as part of the security program), and a description of the circumstances under which local transportation for the employee and the employee's spouse and dependents may be necessary for personal reasons during the time protective services are provided. M's study concludes that a bona fide business-oriented security concern exists with respect to J and J's family and determines that 24-hour protection of J and J's family is not necessary, but that protection is necessary during the course of the criminal trial whenever J or J's family is away from home. Consistent with that recommendation, J is transported every day in a government vehicle for both personal and business reasons and is accompanied by two bodyguard/chauffeurs who have been trained in evasive driving techniques. In addition, J's spouse is driven to and from work and J's children are driven to and from school and occasional school activities. Shortly after the trial is concluded, M's threat analysis unit determines that J and J's family no longer need special protection because the danger posed by the threat no longer exists and, accordingly, vehicle transportation is no longer provided. Because the security study conducted by M complies with the conditions of § 1.132–5(m)(2)(v), M has satisfied the requirement for an independent security study and an overall security program with respect to J is deemed to exist. Thus, with respect to the transportation provided for security concerns, J may exclude as a working condition fringe the value of any special security features of the government vehicle and the value attributable to the two bodyguard/chauffeurs. See *Example (1)* of this paragraph (m)(8). The value of vehicle transportation provided to J and J's family for personal reasons, other than commuting, may also be excluded during the period of protection, because its provision was consistent with the recommendation of the security study.

*Example 7.* Assume the same facts as in *Example (6)* and that J's one-way commute between home and work is 10 miles. Under paragraph (m)(6) of this section, the Federal Government may value transportation provided to J for commuting purposes pursuant to the value set forth in either the vehicle cents-per-mile rule of §1.61–21(e) or the commuting valuation rule of §1.61–21(f). Because the commuting valuation rule yields the least amount of taxable income to J under the circumstances, W values the transportation provided to J for commuting at $1.50 per one-way commute, even though J is a control employee within the meaning of §1.61–21(f)(6).

(n) *Product testing*—(1) *In general.* The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by an employee of the manufacturer outside the employer's workplace, is excludible from gross income as a working condition fringe if—

(i) Consumer testing and evaluation of the product is an ordinary and necessary business expense of the employer;

(ii) Business reasons necessitate that the testing and evaluation of the product be performed off the employer's business premises by employees (*i.e.*, the testing and evaluation cannot be carried out adequately in the employer's office or in laboratory testing facilities);

(iii) The product is furnished to the employee for purposes of testing and evaluation;

(iv) The product is made available to the employee for no longer than necessary to test and evaluate its performance and (to the extent not exhausted) must be returned to the employer at completion of the testing and evaluation period;

(v) The employer imposes limits on the employee's use of the product that significantly reduce the value of any personal benefit to the employee; and

(vi) The employee must submit detailed reports to the employer on the testing and evaluation. The length of the testing and evaluation period must be reasonable in relation to the product being tested.

(2) *Employer-imposed limits.* The requirement of paragraph (n)(1)(v) of this section is satisfied if—

(i) The employer places limits on the employee's ability to select among different models or varieties of the consumer product that is furnished for testing and evaluation purposes; and

(ii) The employer generally prohibits use of the product by persons other than the employee and, in appropriate cases, requires the employee, to purchase or lease at the employee's own expense the same type of product as that being tested (so that personal use by the employee's family will be limited). In addition, any charge by the employer for the personal use by an employee of a product being tested shall be taken into account in determining whether the requirement of paragraph (n)(1)(v) of this section is satisfied.

(3) *Discriminating classifications.* If an employer furnishes products under a testing and evaluation program only, or presumably, to certain classes of employees (such as highly compensated employees, as defined in §1.132–8(g)), this fact may be relevant when determining whether the products are furnished for testing and evaluation purposes or for compensation purposes, unless the employer can show a business reason for the classification of employees to whom the products are furnished (e.g., that automobiles are furnished for testing and evaluation by an automobile manufacturer to its design engineers and supervisory mechanics).

(4) *Factors that negate the existence of a product testing program.* If an employer fails to tabulate and examine the results of the detailed reports submitted by employees within a reasonable period of time after expiration of the testing period, the program will not be considered a product testing

program for purposes of the exclusion of this paragraph (n). Existence of one or more of the following factors may also establish that the program is not a bona fide product testing program for purposes of the exclusion of this paragraph (n):

(i) The program is in essence a leasing program under which employees lease the consumer goods from the employer for a fee;

(ii) The nature of the product and other considerations are insufficient to justify the testing program; or

(iii) The expense of the program outweighs the benefits to be gained from testing and evaluation.

(5) *Failure to meet the requirements of this paragraph (n).* The fair market value of the use of property for product testing and evaluation by an employee outside the employee's workplace, under a product testing program that does not meet all of the requirements of this paragraph (n), is not excludable from gross income as a working condition fringe under this paragraph (n).

(6) *Example.* The rules of this paragraph (n) may be illustrated by the following example:

*Example.* Assume that an employer that manufactures automobiles establishes a product testing program under which 50 of its 5,000 employees test and evaluate the automobiles for 30 days. Assume further that the 50 employees represent a fair cross-section of all of the employees of the employer, such employees submit detailed reports to the employer on the testing and evaluation, the employer tabulates and examines the test results within a reasonable time, and the use of the automobiles is restricted to the employees. If the employer imposes the limits described in paragraph (n)(2) of this section, the employees may exclude the value of the use of the automobile during the testing and evaluation period.

(o) *Qualified automobile demonstration use*—(1) *In general.* The value of qualified automobile demonstration use is excludable from gross income as a working condition fringe. ''Qualified automobile demonstration use'' is any use of a demonstration automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) Such use is provided primarily to facilitate the salesman's performance of services for the employer; and

(ii) There are substantial restrictions on the personal use of the automobile by the salesman.

(2) *Full-time automobile salesman*—(i) *Defined.* The term ''full-time automobile salesman'' means any individual who—

(A) Is employed by an automobile dealer;

(B) Customarily spends at least half of a normal business day performing the functions of a floor salesperson or sales manager;

(C) Directly engages in substantial promotion and negotiation of sales to customers;

(D) Customarily works a number of hours considered full-time in the industry (but at a rate not less than 1,000 hours per year); and

(E) Derives at least 25 percent of his or her gross income from the automobile dealership directly as a result of the activities described in paragraphs (o)(2)(i) (B) and (C) of this section.

For purposes of paragraph (o)(2)(i) (E) of this section, income is not considered to be derived directly as a result of activities described in paragraphs (o)(2)(i) (B) and (C) of this section to the extent that the income is attributable to an individual's ownership interest in the dealership. An individual will not be considered to engage in direct sales activities if the individual's sales-related activities are substantially limited to review of sales price offers from customers. An individual, such as the general manager of an automobile dealership, who receives a sales commission on the sale of an automobile is not a full-time automobile salesman unless the requirements of this paragraph (o)(2)(i) are met. The exclusion provided in this paragraph (o) is available to an individual who meets the definition of this paragraph (o)(2)(i) whether the individual performs services in addition to those described in this paragraph (o)(2)(i). For example, an individual who is an owner of the automobile dealership but who otherwise meets the requirements of this paragraph (o)(2)(i) may exclude from gross income the value of qualified automobile demonstration use. However, the exclusion of this paragraph (o) is not available to owners of large automobile dealerships who do not customarily engage in significant sales activities.

(ii) *Use by an individual other than a full-time automobile salesman.* Personal use of a demonstration automobile by an individual other than a full-time automobile salesman is not treated as a working condition fringe. Therefore, any personal use, including commuting use, of a demonstration automobile by a part-time salesman, automobile mechanic, or other individual who is not a full-time automobile salesman is not "qualified automobile demonstration use" and thus not excludable from gross income. This is the case whether or not the personal use is within the sales area (as defined in paragraph (o)(5) of this section).

(3) *Demonstration automobile.* The exclusion provided in this paragraph (o) applies only to qualified use of a demonstration automobile. A demonstration automobile is an automobile that is—

(i) Currently in the inventory of the automobile dealership; and

(ii) Available for test drives by customers during the normal business hours of the employee.

(4) *Substantial restrictions on personal use.* Substantial restrictions on the personal use of a demonstration automobile exist when all of the following conditions are satisfied:

(i) Use by individuals other than the full-time automobile salesmen (e.g., the salesman's family) is prohibited;

(ii) Use for personal vacation trips is prohibited;

(iii) The storage of personal possessions in the automobile is prohibited; and

(iv) The total use by mileage of the automobile by the salesman outside the salesman's normal working hours is limited.

(5) *Sales area*—(i) *In general.* Qualified automobile demonstration use consists of use in the sales area in which the automobile dealer's sales office is located. The sales area is the geographic area surrounding the automobile dealer's sales office from which the office regularly derives customers.

(ii) *Sales area safe harbor.* With respect to a particular full-time salesman, the automobile dealer's sales area may be treated as the area within a radius of the larger of—

(A) 75 miles or

(B) The one-way commuting distance (in miles) of the particular salesman from the dealer's sales office.

(6) *Applicability of substantiation requirements of sections 162 and 274(d).* Notwithstanding anything in this section to the contrary, the value of the use of a demonstration automobile may not be excluded from gross income as a working condition fringe, by either the employer or the employee, unless, with respect to the restrictions of paragraph (o)(4) of this section, the substantiation requirements of section 274(d) and the regulations thereunder are satisfied. See §1.132–5(c) for general and safe harbor rules relating to the applicability of the substantiation requirements of section 274(d).

(7) *Special valuation rules.* See §1.61–21(d)(6)(ii) for special rules that may be used to value the availability of demonstration automobiles.

(p) *Parking*—(1) *In general.* The value of parking provided to an employee on or near the business premises of the employer is excludable from gross income as a working condition fringe under the special rule of this paragraph (p). If the rules of this paragraph (p) are satisfied, the value of parking is excludable from gross income whether the amount paid by the employee for parking would be deductible under section 162. The working condition fringe exclusion applies whether the employer owns or rents the parking facility or parking space.

(2) *Reimbursement of parking expenses.* A reimbursement to the employee of the ordinary and necessary expenses of renting a parking space on or near the business premises of the employer is excludable from gross income as a working condition fringe, if, but for the parking expense, the employee would not have been entitled to receive and retain such amount from the employer. If, however an employee is entitled to retain a general transportation allowance or a similar benefit whether or not the employee has parking expenses, no portion of that allowance is excludable from gross income under this paragraph (p) even if it is used for parking expenses.

(3) *Parking on residential property*. With respect to an employee, this paragraph (p) does not apply to any parking facility or space located on property owned or leased by the employee for residential purposes.

(4) *Dates of applicability*. This paragraph (p) applies to benefits provided before January 1, 1993. For benefits provided after December 31, 1992, see § 1.132–9.

(q) *Nonapplicability of nondiscrimination rules*. Except to the extent provided in paragraph (n)(3) of this section (relating to discriminating classifications of a product testing program), the nondiscrimination rules of section 132 (h)(1) and § 1.132–8 do not apply in determining the amount, if any, of a working condition fringe.

(r) *Volunteers*—(1) *In general*. Solely for purposes of section 132(d) and paragraph (a)(1) of this section, a bona fide volunteer (including a director or officer) who performs services for an organization exempt from tax under section 501(a), or for a government employer (as defined in paragraph (m)(7) of this section), is deemed to have a profit motive under section 162.

(2) *Limit on application of this paragraph*. This paragraph (r) shall not be used to support treatment of the bona fide volunteer as having a profit motive for purposes of any provision of the Internal Revenue Code of 1986 (Code) other than section 132(d). Nothing in this paragraph (r) shall be interpreted as determining the employment status of a bona fide volunteer for purposes of any section of the Code other than section 132(d).

(3) *Definitions*—(i) *Bona fide volunteer*. For purposes of this paragraph (r), an individual is considered a ''bona fide volunteer'' if the individual does not have a profit motive for purposes of section 162. For example, an individual is considered a ''bona fide volunteer'' if the total value of the benefits provided with respect to the volunteer services is substantially less than the total value of the volunteer services the individual provides to an exempt organization or government employer.

(ii) *Liability insurance coverage for a bona fide volunteer*. For purposes of this paragraph (r), the receipt of liability insurance coverage by a volunteer, or an exempt organization or government employer's undertaking to indemnify the volunteer for liability, does not by itself confer a profit motive on the volunteer, provided the insurance coverage or indemnification relates to acts performed by the volunteer in the discharge of duties, or the performance of services, on behalf of the exempt organization or government employer.

(4) *Example*. The following example illustrates the provisions of paragraph (r) of this section.

*Example*. A is a manager and full-time employee of P, a tax-exempt organization described in section 501(c)(3). B is a member of P's board of directors. Other than $25 to defray expenses for attending board meetings, B receives no compensation for serving as a director and does not have a profit motive. Therefore, B is a bona fide volunteer by application of paragraph (r)(3)(i) of this section and is deemed to have a profit motive under paragraph (r)(1) of this section for purposes of section 132(d). In order to provide liability insurance coverage, P purchases a policy that covers actions arising from A's and B's activities performed as part of their duties to P. The value of the policy and payments made to or on behalf of A under the policy are excludable for A's gross income as a working condition fringe, because A has a profit motive under section 162 and would be able to deduct payments for liability insurance coverage had he paid for it himself. The receipt of liability insurance coverage by B does not confer a profit motive on B by application of paragraph (r)(3)(ii) of this section. Thus, the value of the policy and payments made to or on behalf of B under the policy are excludable from B's income as a working condition fringe. For the year in which the liability insurance coverage is provided to A and B, P may exclude the value of the benefit on the Form W-2 it issues to A or on any Form 1099 it might otherwise issue to B.

(s) *Application of section 274(a)(3)*—(1) *In general*. If an employer's deduction under section 162(a) for dues paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose is disallowed by section 274(a)(3), the amount, if any, of an employee's working condition fringe benefit relating to an employer-provided membership in the club is determined without regard to the application of section 274(a) to the employee. To be excludible as a working condition fringe benefit, however, the amount must otherwise qualify for deduction by the employee under section 162(a). If an employer treats the amount paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose as compensation under section 274(e)(2), then the expense is deductible by the employer as compensation and no amount may be excluded from the employee's gross income as a working condition fringe benefit. See §1.274–2(f)(2)(iii)(A).

(2) *Treatment of tax-exempt employers.* In the case of an employer exempt from taxation under subtitle A of the Internal Revenue Code, any reference in this paragraph (s) to a deduction disallowed by section 274(a)(3) shall be treated as a reference to the amount which would be disallowed as a deduction by section 274(a)(3) to the employer if the employer were not exempt from taxation under subtitle A of the Internal Revenue Code.

(3) *Examples.* The following examples illustrate this paragraph (s):

*Example 1.* Assume that Company *X* provides Employee *B* with a country club membership for which it paid $20,000. B substantiates, within the meaning of paragraph (c) of this section, that the club was used 40 percent for business purposes. The business use of the club (40 percent) may be considered a working condition fringe benefit, notwithstanding that the employer's deduction for the dues allocable to the business use is disallowed by section 274(a)(3), if *X* does not treat the club membership as compensation under section 274(e)(2). Thus, *B* may exclude from gross income $8,000 (40 percent of the club dues, which reflects *B*'s business use). *X* must report $12,000 as wages subject to withholding and payment of employment taxes (60 percent of the value of the club dues, which reflects *B*'s personal use). *B* must include $12,000 in gross income. *X* may deduct as compensation the amount it paid for the club dues which reflects *B*'s personal use provided the amount satisfies the other requirements for a salary or compensation deduction under section 162.

*Example 2.* Assume the same facts as *Example 1* except that Company *X* treats the $20,000 as compensation to *B* under section 274(e)(2). No portion of the $20,000 will be considered a working condition fringe benefit because the section 274(a)(3) disallowance will apply to *B*. Therefore, *B* must include $20,000 in gross income.

(t) *Application of section 274(m)(3)*—(1) *In general.* If an employer's deduction under section 162(a) for amounts paid or incurred for the travel expenses of a spouse, dependent, or other individual accompanying an employee is disallowed by section 274(m)(3), the amount, if any, of the employee's working condition fringe benefit relating to the employer-provided travel is determined without regard to the application of section 274(m)(3). To be excludible as a working condition fringe benefit, however, the amount must otherwise qualify for deduction by the employee under section 162(a). The amount will qualify for deduction and for exclusion as a working condition fringe benefit if it can be adequately shown that the spouse's, dependent's, or other accompanying individual's presence on the employee's business trip has a bona fide business purpose and if the employee substantiates the travel within the meaning of paragraph (c) of this section. If the travel does not qualify as a working condition fringe benefit, the employee must include in gross income as a fringe benefit the value of the employer's payment of travel expenses with respect to a spouse, dependent, or other individual accompanying the employee on business travel. See §§1.61–21(a)(4) and 1.162–2(c). If an employer treats as compensation under section 274(e)(2) the amount paid or incurred for the travel expenses of a spouse, dependent, or other individual accompanying an employee, then the expense is deductible by the employer as compensation and no amount may be excluded from the employee's gross income as a working condition fringe benefit. See §1.274–2(f)(2)(iii)(A).

(2) *Treatment of tax-exempt employers.* In the case of an employer exempt from taxation under subtitle A of the Internal Revenue Code, any reference in this paragraph (t) to a deduction disallowed by section 274(m)(3) shall be treated as a reference to the amount which would be disallowed as a deduction by section 274(m)(3) to the employer if the employer were not exempt from taxation

under subtitle A of the Internal Revenue Code.

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### § 1.132–5T Working condition fringe—1985 through 1988 (temporary).

(a) *In general*—(1) *Definition.* Gross income does not include the value of a working condition fringe. The term ''working condition fringe'' means any property or service provided to an employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowable as a deduction under section 162 or 167. If, under section 274 or any other section, certain substantiation requirements must be met in order for a deduction under section 162 or 167 to be allowable, those substantiation requirements apply to the determination of a working condition fringe. An amount that would be deductible by the employee under, for example, section 212 is not a working condition fringe.

(2) *Trade or business of the employee.* If the hypothetical payment for the property or service would be allowable as a deduction with respect to a trade or business of the employee other than the employee's trade or business of being an employee of the employer, it cannot be taken into account for purposes of determining the amount, if any, of the working condition fringe. For example, assume that, unrelated to company X's trade or business and unrelated to company X's employee's trade or business of being an employee of company X, the employee is a member of the board of directors of company Y. Assume further that company X provides the employee with air transportation to a company Y board of director's meeting. The employee may not exclude the value of the air transportation to the meeting as a working condition fringe. The employee may, however, deduct such amount under section 162 if the section 162 requirements are satisfied. The result would be the same whether the air transportation was provided in the form of a flight on a commercial airline or a seat on a company X airplane.

(b) *Vehicle allocation rules*—(1) *In general*—(i) *General rule.* In general, with respect to an employer-provided vehicle, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the availability of the vehicle. For example, assume that the value of the availability of an employer-provided vehicle for a full year is $2,000, without regard to any working condition fringe (*i.e.*, assuming all personal use). Assume further that the employee drives the vehicle 6,000 miles for his employer's business and 2,000 miles for reasons other than the employer's business. In this situation, the value of the working condition fringe is $2,000 multiplied by a fraction, the numerator of which is the business-use mileage (6,000 miles) and the denominator of which is the total mileage (8,000 miles). Thus, the value of the working condition fringe is $1,500. The total amount includable in the employee's gross income on account of the availability of the vehicle is $500. For purposes of this section, the term ''vehicle'' has the same meaning given the term in §1.61–2T(e)(*2*). Generally, when determining the amount of an employee's working condition fringe, miles accumulated on the vehicle by all employees of the employer during the period in which the vehicle is available to the employee must be considered. For example, assume that an employee of the employer is provided the availability of an automobile for one year. Assume further that during the year, the automobile is regularly used in the employer's business by other employees. All miles accumulated on the automobile by all employees of the employer during the year must be considered. If, however, substantially all the use of the automobile by other employees in the employer's business is permitted during a certain period, such as the last three months of the year, the miles driven by the other employees during that period would not be considered when determining the employee's working condition fringe exclusion.

(ii) *Use by an individual other than the employee.* For purposes of this section, if the availability of a vehicle to an individual would be taxed to an employee, use of the vehicle by the individual is included in references to use by the employee.

(iii) *Provision of an expensive vehicle for personal use.* Assume an employer provides an employee with an expensive vehicle that an employee may use in part for personal purposes. Even though the decision to provide an expensive rather than an inexpensive vehicle is made by the employer for bona fide noncompensatory business reasons, there is no working condition fringe exclusion with respect to the personal miles driven by the employee. If the employee paid for the availability of the vehicle, he would not be entitled to deduct any part of the payment attributable to personal miles.

(2) *Use of different employer-provided automobiles.* The working condition fringe exclusion must be applied on an automobile by automobile basis. For example, assume that automobile Y is available to employee D for 3 days in January and for 5 days in March, and automobile Z is available to D for a week in July. Assume further that the Daily Lease Value, as defined in §1.61–2T, of each automobile is $50. For the eight days of availability of Y in January and March, D uses Y 90 percent for business (by mileage). During July, D uses Z 60 percent for business (by mileage). The value of the working condition fringe is determined separately for each automobile. Therefore, the working condition fringe for Y is $360 ($400 × .90) leaving an income inclusion of $40. The working condition fringe for Z is $210 ($350 × .60) leaving an income inclusion of $140. If the value of the availability of an automobile is determined under the Annual Lease Value rule for one period and Daily Lease Value rule for a second period (see §1.61–2T), the working condition fringe exclusion must be calculated separately for the two periods.

(c) *Applicability of sections 162 and 274(d)*—(1) *In general.* The value of property or services provided to an employee may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, unless the applicable substantiation requirements of either section 274(d) or section 162 (whichever is applicable) and the regulations thereunder are statisfied. With respect to listed property, the substantiation requirements of section 274(d) and the regulations thereunder do not apply to the determination of an employee's working condition fringe exclusion prior to the date that those requirements apply to the first taxable year of the employer beginning after December 31, 1985. For example, if an employer's first taxable year beginning after December 31, 1985, begins on July 1, 1986, with respect to listed property, the substantiation requirements of section 274(d) apply as of that date. The substantiation requirements of section 274(d) apply to an employee even if the requirements of section 274 do not apply to the employee's employer for deduction purposes (such as when the employer is a tax-exempt organization or a governmental unit); in these cases, the requirements of section 274(d) apply to the employee as of January 1, 1986.

(2) *Section 274(d) requirements.* The substantiation requirements of section 274(d) are satisfied by ''adequate records or sufficient evidence corroborating the [employee's] own statement''. Therefore, such records or evidence provided by the employee, and relied upon by the employer to the extent permitted by the regulations promulgated under section 274(d), will be sufficient to substantiate a working condition fringe exclusion.

(d) *Safe harbor rules*—(1) *In general.* Section 1.274–6T provides that the substantiation requirements of section 274(d) and the regulations thereunder may be satisfied, in certain circumstances, by using one or more of the safe harbor rules prescribed in §1.274–6T. If the employer uses one of the safe harbor rules prescribed in §1.274–6T during a period with respect to a vehicle (as defined in §1.61–2T), that rule must be used by the employer to substantiate a working condition fringe exclusion with respect to that vehicle during the period. An employer that is exempt from Federal income tax may still use one of the safe harbor rules (if the requirements of that section are otherwise met during a period) to substantiate a working condition fringe exclusion with respect to a vehicle during the period. If the employer uses one of the methods prescribed in §1.274–6T during a period with respect to an employer-provided vehicle, that method may be used by an employee to substantiate a working condition fringe exclusion with respect to the same vehicle during the period, as long as the employee includes in gross income the amount allocated to the employee pursuant to §1.274–6T and this section. (See §1.61–2T(c)(2)(i) for other rules concerning when an employee must include in income the amount determined by the employer.) If, however, the employer uses the safe harbor rule prescribed in §1.274–6T(a) (2) or (3) and the employee without the employer's knowledge uses the vehicle for purposes other than de minimis personal use (in the case of the rule prescribed in §1.274–6T(a)(2)), or for purposes other than de minimis personal use and commuting (in the case of the rule prescribed in §1.274–6T(a)(3)), then the employee must include additional income for the unauthorized use of the vehicle.

(2) *Period for use of safe harbor rules.* The rules prescribed in this paragraph (d) assume that the safe harbor rules prescribed in §1.274–6T are used for a one-year period. Accordingly, references to the value of the availability of a vehicle, amounts excluded as a working condition fringe, etc., are based on a one-year period. If the safe harbor rules prescribed in §1.274–6T are used for a period of less than a year, the amounts referenced in the previous sentence must be adjusted accordingly. For purposes of this section, the term ''personal use'' has the same meaning as prescribed in §1.274–6T(e)(5).

(e) *Vehicles not available to employees for personal use.* For a vehicle described in §1.274–6T(a)(2) (relating to certain vehicles not used for personal purposes), the working condition fringe exclusion is equal to the value of the availability of the vehicle if the employer uses the method prescribed in §1.274–6T(a)(2).

(f) *Vehicles not available to employees for personal use other than commuting.* For a vehicle described in §1.274–6T(a)(3) (relating to certain vehicles not used for personal purposes other than commuting), the working condition fringe exclusion is equal to the value of the availability of the vehicle for purposes other than commuting if the employer uses the method prescribed in §1.274–6T(a)(3). This rule applies only if the special rule for valuing commuting use, as prescribed in §1.61–2T, is used and the amount determined under the special rule is either included in the employee's income or reimbursed by the employee.

(g) *Vehicles used in connection with the business of farming that are available to employees for personal use*—(1) *In general.* For a vehicle described in §1.274–6T(b) (relating to certain vehicles used in connection with the business of farming), the working condition fringe exclusion is calculated by multiplying the value of the availability of the vehicle by 75 percent.

(2) *Vehicles available to more than one individual.* If the vehicle is available to more than one individual, the employer must allocate the gross income attributable to the vehicle (25 percent of the value of the availability of the vehicle) among the employees (and other individuals whose use would not be attributed to an employee) to whom the vehicle was available. This allocation must be done in a reasonable manner to reflect the personal use of the vehicle by the individuals. An amount that would be allocated to a sole proprietor reduces the amounts that may be allocated to employees but are otherwise to be disregarded for purposes of this paragraph (g). For purposes of this paragraph (g), the value of the availability of a vehicle may be calculated as if the vehicle were available to only one employee continuously and without regard to any working condition fringe exclusion.

(3) *Examples.* The following examples illustrate a reasonable allocation of gross income with respect to an employer-provided vehicle between two employees:

*Example 1.* Assume that two farm employees share the use of a vehicle which for a calendar year is regularly used directly in connection with the business of farming and qualifies for use of the rule in §1.274–6T (b). Employee A uses the vehicle in the morning directly in connection with the business of farming and employee B uses the vehicle in the afternoon directly in connection with the business of farming. Assume further that employee B takes the vehicle home in the evenings and on weekends. The employer should allocate all the income attributable to the availability of the vehicle to employee B.

*Example 2.* Assume that for a calendar year, farm employees C and D share the use of a vehicle that is regularly used directly in connection with the business of farming and qualifies for use of the rule in §1.274–6T (b). Assume further that the employees alternate taking the vehicle home in the evening and alternate the availability of the vehicle for personal purposes on weekends. The employer should allocate the income attributable to the availability of the vehicle for personal use (25 percent of the value of the availability of the vehicle) equally between the two employees.

*Example 3.* Assume the same facts as in example (2) except that C is the sole proprietor of the farm. Based on these facts, C should allocate the same amount of income to D as was allocated to D in example (2). No other income attributable to the availability of the vehicle for personal use should be allocated.

(h) *Qualified non-personal use vehicles.* Effective January 1, 1985, 100 percent of the value of the use of a qualified non-personal use vehicle (as described in §1.274–5T (k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in paragraph (k) (3) through (7) of that section, the use of the vehicles conforms to the requirements of that paragraph.

(i) [Reserved]

(j) *Application of section 280F.* In determining the amount, if any, of an employee's working condition fringe, section 280F and the regulations thereunder do not apply. For example, assume that an employee has available for a calendar year an employer-provided automobile with a fair market value of $28,000. Assume further that the special rule provided in §1.61–2T is used and that the Annual Lease Value, as defined in §1.61–2T, is $7,750, and that all of the employee's use of the automobile is in the employer's business. The employee would be entitled to exclude the entire Annual Lease Value as a working condition fringe, despite the fact that if the employee paid for the availability of the automobile, an income inclusion would be required under §1.280F–5T(d)(1). This paragraph (j) does not affect the applicability of section 280F to the employer with respect to such employer-provided automobile, nor does it affect the applicability of section 274. For rules concerning substantiation of an employee's working condition fringe, see paragraph (c) of this section.

(k) *Aircraft allocation rule.* In general, with respect to a flight on an employer-provided aircraft, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the flight on the aircraft. For example, if employee P flies on P's employer's airplane primarily for business reasons of P's employer, the value of P's flight is excludable as a working condition fringe. However, if P's spouse and children accompany P on such airplane trip primarily for personal reasons, the value of the flights by P's spouse and children are includable in P's gross income. See §1.61–2T(g) for special rules for valuing personal flights.

(l) [Reserved]

(m) *Employer-provided transportation for security concerns*—(1) *In general.* The amount of a working condition fringe exclusion with respect to employer-provided transportation is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the transportation. Generally, if an employee pays for transportation taken for primarily personal purposes, the employee may not deduct any part of the amount paid. Thus, the employee may not generally exclude the value of employer-provided transportation as a working condition fringe if such transportation is primarily personal. If, however, for bona fide business-oriented security concerns, the employee purchases transportation that provides him or her with additional security, the employee may generally deduct the excess of the amount paid for the transportation over the lesser amount the employee would have paid for the same mode of transportation absent the bona fide business-oriented security concerns. With respect to a vehicle, the phrase ''the same mode of transportation'' means use of the same vehicle without the additional security aspects, such as bulletproof glass. With respect to air transportation, the phrase ''the same mode of transportation'' means comparable air transportation. These same rules apply to the determination of an employee's working condition fringe exclusion. For example, if an employer provides an employee with an automobile for commuting and, for bona fide business-oriented security concerns, the automobile is specially designed for security, then the employee may exclude the value of the special security design as a working condition fringe if the employee's automobile would not have had such security design but for the bona fide business-oriented security concerns. The employee may not exclude the value of the commuting from income as a working condition fringe because commuting is a nondeductible personal expense. Similarly, if an employee travels on a personal trip in an employer-provided aircraft for bona fide business-oriented security concerns, the employee may exclude the excess, if any, of the value of the flight over the amount the employee would have paid for comparable air transportation, but for the bona fide business-oriented security concerns. Because personal travel is a nondeductible expense, the employee may not exclude the total value of the trip as a working condition fringe.

(2) *Demonstration of bona fide business-oriented security concerns*—(i) *In general.* For purposes of this paragraph (m), the existence of a bona fide business-oriented security concern for the furnishing of a specific form of transportation to an employee is determined on the basis of all the facts and circumstances within the following guidelines:

(A) *Services performed outside the United States.* With respect to an employee performing services for an employer in a geographic area other than the United States, a factor indicating a bona fide business-oriented security concern is a recent history of violent terrorist activity in such geographic area (such as bombings or abductions for ransom), unless such activity is focused on a group of individuals which does not include the employee or a similarly situated employee or on a section of the geographic area which does not incude the employee.

(B) *Services performed in the United States.* With respect to an employee performing services for an employer in the United States, a factor indicating a bona fide business-oriented security concern is threats on the life of the employee or on the life of a similarly situated employee because of the employee's status as an employee of the employer.

(ii) *Establishment of overall security program.* Notwithstanding anything in paragraph (m)(2)(i) of this section to the contrary, *no* bona fide business-oriented security concern will be deemed to exist unless the employee's employer establishes an overall security program with respect to the employee involved.

(iii) *Overall security program*—(A) *Definition.* An overall security program is one in which security is provided to protect the employee on a 24-hour basis. The employee must be protected while at the employee's residence, while commuting to and from the employee's workplace, and while at the employee's workplace. In addition, the employee must be protected while traveling, whether for business or personal purposes. An overall security program would include the provision of a bodyguard/driver who is trained in evasive driving techniques; and automobile specially equipped for security; guards, metal detectors, alarms, or similar methods of controling access to the employee's workplace and residence; and, in appropriate cases, flights on the employer's aircraft for business and personal reasons.

(B) *Application.* There is no overall security program when, for example, security is provided at the employee's workplace but not at the employee's residence. In addition, the fact that an employer requires an employee to travel on the employer's aircraft, or in an employer-provided vehicle that contains special security features, does not alone constitute an overall security program. The preceding sentence applies regardless of the existence of a corporate or other resolution requiring the employee to travel in the employer's airplane or vehicle for personal as well as business reasons. Similarly, the existence of an independent security study particular to the employer and its employees, or to the employee involved, does not alone constitute an overall security program.

(iv) *Effect of an independent security study*. An overall security program with respect to an employee is deemed to exist even though security is not provided to an employee on a 24-hour basis if the conditions of this paragraph (m)(2)(iv) are satisfied:

(A) A security study is performed with respect to the employer and the employee (or a similarly situated employee) by an independent security consultant;

(B) The security study is based on an objective assessment of all the facts and circumstances;

(C) The recommendation of the security study is that an overall security program (as defined in paragraph (m)(2)(iii) of this section) is not necessary and such recommendation is reasonable under the circumstances; and

(D) The employer applies the specific security recommendations contained in the security study to the employee on a consistent basis.

The value of the security provided pursuant to a security study that meets the requirements of this paragraph (m)(2)(iv) may be excluded from income, if the security study conclusions are reasonable and, but for the bona fide business-oriented security concerns, the employee would not have had such security. No exclusion from income applies to security provided by the employer that is not recommended in the security study. Security study conclusions may be reasonable even if, for example, it is recommended that security be limited to certain geographic areas, as in the case where air travel security is provided only in certain foreign countries.

(v) *Application of security rules to spouses and dependents*. The availability of a working condition fringe exclusion based on the existence of a bona fide business-oriented security concern with respect to the spouse and dependents of an employee is determined separately for such spouse and dependents under the rules established in this paragraph (m).

(vi) *Working condition safe harbor*. Under the special rule of this paragraph (m)(2)(vi), if, for a bona fide business-oriented security concern, the employer requires that the employee travel on an employer-provided aircraft for a personal trip, the employer and the employee may exclude, as a working condition fringe, the excess value of the trip over comparable first-class airfare without having to show that but for the bona fide business-oriented security concerns, the employee would have flown first-class on a commercial aircraft. If the special valuation rule provided in §1.61–2T is used, the excess over the amount determined by multiplying an aircraft multiple of 200-percent by the base aircraft valuation formula may be excluded as a working condition fringe.

(3) *Examples*. The provisions of this paragraph (m) may be illustrated by the following examples:

*Example 1*. Assume that in response to several death threats on the life of A, the president of a multinational company (company X), company X establishes an overall security program for A, including an alarm system at A's home and guards at A's workplace, the use of a vehicle that is specially equipped with alarms, bulletproof glass, and armor plating and a bodyguard/driver who is trained in evasive driving techniques. Assume further that A is driven for both personal and business reasons in the vehicle. Also, assume that but for the bona fide business-oriented security concerns, no part of the overall suecurity program would been provided to A. With respect to the transportation provided for security reasons, A may exclude as a working condition fringe the value of the special security features of the vehicle and the value attributable to the bodyguard/driver. Thus, if the value of the specially equipped vehicle is $40,000, and the value of the vehicle without the security features is $25,000, A may determine A's income attributable to the vehicle as if the vehicle were worth $25,000. A must include in income the value of the availability of the vehicle for personal use.

*Example 2*. Assume that B is the chief executive officer of a multinational corporation (company Y). Assume further that there have been kidnapping attempts and other terrorist activities in the foreign countries in which B performs services and that at least some of such activities have been directed against B or similarly situated employees. In response to these activities, company Y provides B with an overall security program, including an alarm system at B's home and bodyguards at B's workplace, a bodyguard/driver who is trained in evasive driving techniques, and a vehicle specially designed for security during B's overseas travels. In addition, assume that company Y requires B to travel in company Y's airplane for business and personal trips taken to, from, and within these foreign countries. Also, assume that but for bona fide business-oriented security concerns, no part of the overall sucurity program would have been provided to B. B may exclude as a working condition fringe the value of the special security features of the automobile and the value attributable to the bodyguards and the bodyguard/driver. B may also exclude as a working condition fringe the excess, if any, of the value of personal flights in the company Y airplane over first-class airfare (as determined under the special valuation rule provided in §1.61–2T if the safe harbor described in paragraph (m)(2)(vi) of this section is used). B must include in income the value of the availability of the vehicle for personal use and the lesser of the value of first-class airfare or the value of the flight determined under §1.61–2T for each personal flight taken by B in company Y's airplane.

*Example 3.* Assume the same facts as in example (2) except that company Y also requires B to travel in company Y's airplane within the United States, and provides B with a chauffeur-driven limousine for business and personal travel in the United States. Assume further that company Y also requires B's spouse and dependents to travel in company Y's airplane for personal flights in the United States. If no bona fide business-oriented security concern exists with respect to travel in the United States, B may not exclude any portion of the value of the availability of the driver or limousine for personal use in the United States. Thus, B must include in income the value of the availability of the vehicle and driver for personal use. In addition, B may not exclude any portion of the value attributable to personal flights by B or B's spouse and dependents on company Y's airplane. Thus, B must include in income the value attributable to the personal use of company Y's airplane. See §1.61–2T for rules relating to the valuation of personal flights on employer-provided airplanes.

*Example 4.* Assume that company Z retains an independent security consultant to perform a security study with respect to its chief executive officer. Assume further that, based on an objective assessment of the facts and circumstances, the security consultant reasonably recommends that the employee be provided security at his workplace and for ground transportation, but not for air transportation. If company Z follows the recommendations on a consistent basis, an overall security program will be deemed to exist with respect to the workplace and ground transportation security only.

*Example 5.* Assume the same facts as in example (4) except that company Z only provides the employee security while commuting to and from work, but not for any other ground transportation. Since the recommendations of the independent security study are not applied on a consistent basis, an overall security program will not be deemed to exist.

(n) *Product testing*—(1) *In general.* The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by an employee outside the employer's workplace is excludable as a working condition fringe if—

(i) Consumer testing and evaluation of the product is an ordinary and necessary business expense of the employer,

(ii) Business reasons necessitate that the testing and evaluation of the product be performed off the employer's business premises by employees (*i.e.*, the testing and evaluation cannot be carried out adequately in the employer's office or in laboratory testing facilities),

(iii) The product is furnished to the employee for purposes of testing and evaluation,

(iv) The product is made available to the employee for no longer than necessary to test and evaluate its performance and must be returned to the employer at completion of the testing and evaluation period,

(v) The employer imposes limitations of the employee's use of the product which significantly reduce the value of any personal benefit to the employee, and

(vi) The employee must submit detailed reports to the employer on the testing and evaluation.

The length of the testing and evaluation period must be reasonable in relation to the product being tested.

(2) *Employer-imposed limitations.* The requirement of paragraph (n)(1)(v) of this section is satisfied if—

(i) The employer places limitations on the employee's ability to select among different models or varieties of the consumer product that is furnished for testing and evaluation purposes,

(ii) The employer's policy provides for the employee, in appropriate cases, to purchase or lease at his or her own expense the same type of product as that being tested (so that personal use by the employee's family will be limited), and

(iii) The employer generally prohibits use of the product by members of the employee's family.

(3) *Discriminating classifications.* If an employer furnishes products under a testing and evaluation program only to officers, owners, or highly compensated employees, this fact may be considered in a determination of whether the products are furnished for testing and evaluation purposes or for compensation purposes, unless the employer can show a business reason for the classification of employees to whom the products are furnished (e.g., that automobiles are furnished for testing and evaluation by an automobile manufacturer to its design engineers and supervisory mechanics).

(4) *Factors that negate the existence of a product testing program.* If an employer fails to tabulate and examine the results of the detailed reports within a reasonable period of time after expiration of the testing period, the program will not be considered a product testing program. Existence of one or more of the following factors may also establish that the program is not a bona fide product testing program:

(i) The program is in essence a leasing program under which employees lease the consumer goods from the employer for a fee;

(ii) The nature of the product and other considerations are insufficient to justify the testing program; or

(iii) The expense of the program outweighs the benefits to be gained from testing and evaluation.

(5) *Failure to meet the requirements of this paragraph (n).* The fair market value of the use of property for product testing and evaluation by an employee outside the employee's workplace, under a product testing program that does not meet all of the requirements of this paragraph (n), is not excludable as a working condition fringe.

(6) *Example.* Assume that an employer that manufactures automobiles establishes a product testing program under which 50 of its 5,000 employees test and evaluate the automobiles for 30 days. Assume further that the 50 employees represent a fair cross section of all of the employees of the employer, such employees submit detailed reports to the employer on the testing and evaluation, the employer tabulates and examines the test results within a reasonable time, and the use of the automobiles is restricted to the employees. If the rules of paragraph (n)(2) of this section are also met, the employees may exclude the value of the use of the automobile during the testing and evaluation period.

(o) *Qualified automobile demonstration use*—(1) *In general.* The value of qualified automobile demonstration use is excludable from gross income as a working condition fringe. The term ''qualified automobile demonstration use'' means any use of a demonstration automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) Such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) There are substantial restrictions on the personal use of the automobile by the salesman.

(2) *Full-time automobile salesman*—(i) *Definition.* The term ''full-time automobile salesman'' means any individual who—

(A) Is employed by an automobile dealer,

(B) Customarily spends substantially all of a normal business day on the sales floor selling automobiles to customers of the automobile dealership,

(C) Customarily works a number of hours considered full-time in the industry (but at a rate not less than 1,000 hours per year), and

(D) Derives at least 85 percent of his or her gross income from the automobile dealership directly as a result of such automobile sales activities.

An individual, such as the general manager of an automobile dealership, who receives a sales commission on the sale of an automobile is not a full-time automobile salesman unless the requirements of this paragraph (o)(2)(i) are met. The exclusion provided in this paragraph (o) is available to an individual who meets the definition of this paragraph (o)(2)(i) regardless of whether the individual performs services in addition to those described in this paragraph (o)(2)(i). For example, an individual who is an owner of the automobile dealership but who otherwise meets the requirements of this paragraph (o)(2)(i) may exclude from gross income the value of qualified automobile demonstration use.

(ii) *Use by an individual other than a full-time automobile salesman.* Personal use of a demonstration automobile by an individual other than a full-time automobile salesman is not treated as a working condition fringe. Therefore, any personal use, including commuting use, of a demonstration automobile by a part-time salesman, automobile mechanic, manager, or other individual is not ''qualified automobile demonstration use'' and thus not excludable from gross income.

(3) *Demonstration automobile.* The exclusion provided in this paragraph (o) applies only to qualified use of a demonstration automobile. A demonstration automobile is an automobile that is—

(i) Currently in the inventory of the automobile dealership, and

(ii) Available for test drives by customers during the normal business hours of the employee.

(4) *Substantial restrictions on personal use.* Substantial restrictions on the personal use of demonstration automobiles exist when all of the following conditions are satisfied:

(i) Use by individuals other than the full-time automobile salesmen (e.g., the salesman's family) is prohibited,

(ii) Use for personal vacation trips is prohibited,

(iii) The storage of personal possessions in the automobile is prohibited, and

(iv) The total use by mileage of the automobile by the salesman outside the salesman's normal working hours is limited.

(5) *Sales area*—(i) *In general.* Qualified automobile demonstration use must be use in the sales area in which the automobile dealer's sales office is located. The sales area is the geographic area surrounding the automobile dealer's sales office from which the office regularly derives customers.

(ii) *Sales area safe harbor.* With respect to a particular full-time salesman, the automobile dealer's sales area may be treated as the larger of the area within a 75 mile radius of the dealer's sales office, or the on-way commuting distance (in miles) of the particular salesman.

(p) *Parking*—(1) *In general.* The value of parking provided to an employee on or near the business premises of the employer is excludable from gross income as a working condition fringe. The working condition fringe exclusion applies whether the employer owns or rents the parking facility or parking space.

(2) *Reimbursement of parking expenses.* Any reimbursement to the employee of the ordinary and necessary expenses of renting a parking space on or near the business premises of the employer is excludable as a working condition fringe. The preceding sentence does not apply, however, to cash payments that are not actually used for renting a parking space. Thus, that part of a general transportation allowance that is not used for parking is not excludable as a working condition fringe under this paragraph (p).

(3) *Parking on residential property.* With respect to an employee, this paragraph (p) does not apply to any parking facility or space located on property owned or leased for residential purposes by the employee.

(q) *Nonapplicability of nondiscrimination rules.* Except to the extent provided in paragraph (n)(3) of this section, the nondiscrimination rules of section 132(h)(1) and §1.132–8T do not apply in determining the amount, if any, of a working condition fringe.

[T.D. 8063, 50 FR 52303, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28600, July 6, 1989]

## § 1.132–6 De minimis fringes.

(a) *In general.* Gross income does not include the value of a de minimis fringe provided to an employee. The term ''de minimis fringe'' means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(b) *Frequency*—(1) *Employee-measured frequency*. Generally, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringes to each individual employee. For example, if an employer provides a free meal in kind to one employee on a daily basis, but not to any other employee, the value of the meals is not de minimis with respect to that one employee even though with respect to the employer's entire workforce the meals are provided ''infrequently.''

(2) *Employer-measured frequency*. Notwithstanding the rule of paragraph (b)(1) of this section, except for purposes of applying the special rules of paragraph (d)(2) of this section, where it would be administratively difficult to determine frequency with respect to individual employees, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringes to the workforce as a whole. Therefore, under this rule, the frequency with which any individual employee receives such a fringe benefit is not relevant and in some circumstances, the de minimis fringe exclusion may apply with respect to a benefit even though a particular employee receives the benefit frequently. For example, if an employer exercises sufficient control and imposes significant restrictions on the personal use of a company copying machine so that at least 85 percent of the use of the machine is for business purposes, any personal use of the copying machine by particular employees is considered to be a de minimis fringe.

(c) *Administrability*. Unless excluded by a provision of chapter 1 of the Internal Revenue Code of 1986 other than section 132(a)(4), the value of any fringe benefit that would not be unreasonable or administratively impracticable to account for is includible in the employee's gross income. Thus, except as provided in paragraph (d)(2) of this section, the provision of any cash fringe benefit is never excludable under section 132(a) as a de minimis fringe benefit. Similarly except as otherwise provided in paragraph (d) of this section, a cash equivalent fringe benefit (such as a fringe benefit provided to an employee through the use of a gift certificate or charge or credit card) is generally not excludable under section 132(a) even if the same property or service acquired (if provided in kind) would be excludable as a de minimis fringe benefit. For example, the provision of cash to an employee for a theatre ticket that would itself be excludable as a de minimis fringe (see paragraph (e)(1) of this section) is not excludable as a de minimis fringe.

(d) *Special rules*—(1) *Transit passes*. A public transit pass provided at a discount to defray an employee's commuting costs may be excluded from the employee's gross income as a de minimis fringe if such discount does not exceed $21 in any month. The exclusion provided in this paragraph (d)(1) also applies to the provision of tokens or fare cards that enable an individual to travel on the public transit system if the value of such tokens and fare cards in any month does not exceed by more than $21 the amount the employee paid for the tokens and fare cards for such month. Similarly, the exclusion of this paragraph (d)(1) applies to the provision of a voucher or similar instrument that is exchangeable solely for tokens, fare cards, or other instruments that enable the employee to use the public transit system if the value of such vouchers and other instruments in any month does not exceed $21. The exclusion of this paragraph (d)(1) also applies to reimbursements made by an employer to an employee after December 31, 1988, to cover the cost of commuting on a public transit system, provided the employee does not receive more than $21 in such reimbursements for commuting costs in any given month. The reimbursement must be made under a bona fide reimbursement arrangement. A reimbursement arrangement will be treated as bona fide if the employer establishes appropriate procedures for verifying on a periodic basis that the employee's use of public transportation for commuting is consistent with the value of the benefit provided by the employer for that purpose. The amount of in-kind public transit commuting benefits and reimbursements provided during any month that are excludible under this paragraph (d)(1) is limited to $21. For months ending before July 1, 1991, the amount is $15 per month. The exclusion provided in this paragraph (d)(1) does not apply to the provision of any benefit to defray public transit expenses incurred for personal travel other than commuting.

(2) *Occasional meal money or local transportation fare*—(i) *General rule.* Meals, meal money or local transportation fare provided to an employee is excluded as a de minimis fringe benefit if the benefit provided is reasonable and is provided in a manner that satisfies the following three conditions:

(A) *Occasional basis.* The meals, meal money or local transportation fare is provided to the employee on an occasional basis. Whether meal money or local transportation fare is provided to an employee on an occasional basis will depend upon the frequency *i.e.*, the availability of the benefit and regularity with which the benefit is provided by the employer to the employee. Thus, meals, meal money, or local transportation fare or a combination of such benefits provided to an employee on a regular or routine basis is not provided on an occasional basis.

(B) *Overtime.* The meals, meal money or local transportation fare is provided to an employee because overtime work necessitates an extension of the employee's normal work schedule. This condition does not fail to be satisifed merely because the circumstances giving rise to the need for overtime work are reasonably foreseeable.

(C) *Meal money.* In the case of a meal or meal money, the meal or meal money is provided to enable the employee to work overtime. Thus, for example, meals provided on the employer's premises that are consumed during the period that the employee works overtime or meal money provided for meals consumed during such period satisfy this condition.

In no event shall meal money or local transportation fare calculated on the basis of the number of hours worked (e.g., $1.00 per hour for each hour over eight hours) be considered a de minimis fringe benefit.

(ii) *Applicability of other exclusions for certain meals and for transportation provided for security concerns.* The value of meals furnished to an employee, an employee's spouse, or any of the employee's dependents by or on behalf of the employee's employer for the convenience of the employer is excluded from the employee's gross income if the meals are furnished on the business premises of the employer (see section 119). (For purposes of the exclusion under section 119, the definitions of an employee under §1.132–1(b) do not apply.) If, for a bona fide business-oriented security concern, an employer provides an employee vehicle transportation that is specially designed for security (for example, the vehicle is equipped with bulletproof glass and armor plating), and the conditions of §1.132–5(m) are satisfied, the value of the special security design is excludable from gross income as a working condition fringe if the employee would not have had such special security design but for the bona fide business-oriented security concern.

(iii) *Special rule for employer-provided transportation provided in certain circumstances.* (A) *Partial exclusion of value.* If an employer provides transportation (such as taxi fare to an employee for use in commuting to and/or from work because or unusual circumstances and because, based on the facts and circumstances, it is unsafe for the employee to use other available means of transportation, the excess of the value of each one-way trip over $1.50 per one-way commute is excluded from gross income. The rule of this paragraph (d)(2)(iii) is not available to a control employee as defined in §1.61–21(f) (5) and (6).

(B) *''Unusual circumstances''.* Unusual circumstances are determined with respect to the employee receiving the transportation and are based on all facts and circumstances. An example of unusual circumstances would be when an employee is asked to work outside of his normal work hours (such as being called to the workplace at 1:00 am when the employee normally works from 8:00 am to 4:00 pm). Another example of unusual circumstances is a temporary change in the employee's work schedule (such as working from 12 midnight to 8:00 am rather than from

8:00 am to 4:00 pm for a two-week period).

(C) ''*Unsafe conditions*''. Factors indicating whether it is unsafe for an employee to use other available means of transportation are the history of crime in the geographic area surrounding the employee's workplace or residence and the time of day during which the employee must commute.

(3) *Use of special rules or examples to establish a general rule*. The special rules provided in this paragraph (d) or examples provided in paragraph (e) of this section may not be used to establish any general rule permitting exclusion as a de minimis fringe. For example, the fact that $252 (*i.e.*, $21 per month for 12 months) worth of public transit passes can be excluded from gross income as a de minimis fringe in 1992 does not mean that any fringe benefit with a value equal to or less than $252 may be excluded as a de minimis fringe. As another example, the fact that the commuting use of an employer-provided vehicle more than one day a month is an example of a benefit not excludable as a de minimis fringe (see paragraph (e)(2) of this section) does not mean that the commuting use of a vehicle up to 12 times per year is excludable from gross income as a de minimis fringe.

(4) *Benefits exceeding value and frequency limits*. If a benefit provided to an employee is not de minimis because either the value or frequency exceeds a limit provided in this paragraph (d), no amount of the benefit is considered to be a de minimis fringe. For example, if, in 1992, an employer provides a $50 monthly public transit pass, the entire $50 must be included in income, not just the excess value over $21.

(e) *Examples*—(1) *Benefits excludable from income*. Examples of de minimis fringe benefits are occasional typing of personal letters by a company secretary; occasional personal use of an employer's copying machine, provided that the employer exercises sufficient control and imposes significant restrictions on the personal use of the machine so that at least 85 percent of the use of the machine is for business purposes; occasional cocktail parties, group meals, or picnics for employees and their guests; traditional birthday or holiday gifts of property (not cash) with a low fair market value; occasional theater or sporting event tickets; coffee, doughnuts, and soft drinks; local telephone calls; and flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis).

(2) *Benefits not excludable as de minimis fringes*. Examples of fringe benefits that are not excludable from gross income as de minimis fringes are: season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than one day a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; employer-provided group-term life insurance on the life of the spouse or child of an employee; and use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend. Some amount of the value of certain of these fringe benefits may be excluded from income under other statutory provisions, such as the exclusion for working condition fringes. See §1.132–5.

(f) *Nonapplicability of nondiscrimination rules*. Except to the extent provided in §1.132–7, the nondiscrimination rules of section 132(h)(1) and §1.132–8 do not apply in determining the amount, if any, of a de minimis fringe. Thus, a fringe benefit may be excludable as a de minimis fringe even if the benefit is provided exclusively to highly compensated employees of the employer.

[T.D. 8256, 54 FR 28615, July 6, 1989, as amended by T.D. 8389, 57 FR 1871, Jan. 16, 1992; 57 FR 5982, Feb. 19, 1992]

### § 1.132–6T De minimis fringe—1985 through 1988 (temporary).

(a) *In general*. Gross income does not include the value of a de minimis fringe provided to an employee. The term ''de minimis fringe'' means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(b) *Frequency*. Generally, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringe to each individual employee. For example, if an employer provides a free meal to one employee on a daily basis, but not to any other employee, the value of the meals is not de minimis with respect to that one employee even though with respect to the employer's entire workforce the meals are provided "infrequently." However, where it would be administratively difficult to determine frequency with respect to individual employees, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringes to the employees and not the frequency with which individual employees receive them. In these cases, if an employer occasionally provides a fringe benefit of de minimis value to the employer's employees, the de minimis fringe exclusion may apply even though a particular employee receives the benefit frequently. For example, if an employer exercises sufficient control and imposes significant restrictions on the personal use of a company copying machine so that at least 85 percent of the use of the machine is for business purposes, any personal use the copying machine by particular employees is considered to be a de minimis fringe.

(c) *Administrability*. Unless excluded by a statutory provision other than section 132(a)(4), the value of any fringe benefit that would not be unreasonable or administratively impracticable to account for must be included in the employee's gross income. Thus, except as otherwise provided in this section, the provision of any cash fringe benefit (or any fringe benefit provided to an employee through the use of a charge or credit card) is not excludable as a de minimis fringe. For example, the provision of cash to an employee for personal entertainment is not excludable as a de minimis fringe.

(d) *Special rules*—(1) *Transit passes*. A transit pass provided to an employee at a discount not exceeding $15 per month may be excluded as a de minimis fringe. The exclusion provided in this paragraph (d) also applies to the provision of $15 in tokens or fare cards that enable an individual to travel on the transit system. The exclusion provided in this paragraph (d) does not apply to any provision of cash or other benefit to defray transit expenses incurred for personal travel.

(2) *Occasional meal money or local transportation fare*. Occasional meal money or local transportation fare provided to an employee because overtime work necessitates an extension of the employee's normal workday is excluded as a de minimis fringe.

(3) *Use of special rules to establish a general rule*. The special rules provided in this paragraph (d) may not be used to establish any general rule. For example, the fact that $180 ($15 per month for 12 months) worth of transit passes can be excluded in a year does not mean that any fringe benefit with a value equal to or less than $180 may be excluded as a de minimis fringe.

(4) *Benefits exceeding value and frequency limitations*. If the benefit provided to an employee is not de minimis because either the value or frequency exceeds a limit provided in this paragraph (d), no amount of the benefit is considered to be de minimis. For example, if an employer provides a $20 monthly transit pass, the entire $20 must be included in income, not just the excess value over $15.

(e) *Nonapplicability of nondiscrimination rules*. Except to the extent provided in §1.132–7T, the nondiscrimination rules of section 132(h)(1) and §1.132–8T do not apply. Thus, for example, a fringe benefit may be a de minimis fringe even if the benefit is provided exclusively to officers of the employer.

(f) *Examples*—(1) *Benefits excludable from income*. Examples of de minimis fringe benefits are occasional typing of personal letters by a company secretary; occasional personal use of an employer's copying machine, provided that the employer exercises sufficient control and imposes significant restrictions on the personal use of the machine so that at least 85 percent of the use of the machine is for business purposes; occasional cocktail parties or picnics for employees and their guests; traditional holiday gifts of property (not cash) with a low fair market value; occasional theatre or sporting event tickets; and coffee and doughnuts.

(2) *Benefits not excludable as de minimis fringes.* Examples of fringe benefits that are not excludable from income as de minimis fringes are: season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than once a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; and use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend. Some amount of the value of these fringe benefits may be excluded under other statutory provisions, such as the exclusion for working condition fringes. See §1.132–5T.

[T.D. 8063, 50 FR 52308, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28600, July 6, 1989]

### § 1.132–7 Employer-operated eating facilities.

(a) *In general*—(1) *Condition for exclusion*—(i) *General rule.* The value of meals provided to employees at an employer-operated eating facility for employees is excludable from gross income as a de minimis fringe only if on an annual basis, the revenue from the facility equals or exceeds the direct operating costs of the facility.

(ii) *Additional condition for highly compensated employees.* With respect to any highly compensated employee, an exclusion is available under this section only if the condition set out in paragraph (a)(1)(i) of this section is satisfied and access to the facility is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of highly compensated employees. See §1.132–8. For purposes of this paragraph (a)(1)(ii), each dining room or cafeteria in which meals are served is treated as a separate eating facility, whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(2) *Employer-operated eating facility for employees.* An employer-operated eating facility for employees is a facility that meets all of the following conditions—

(i) The facility is owned or leased by the employer,

(ii) The facility is operated by the employer,

(iii) The facility is located on or near the business premises of the employer, and

(iv) The meals furnished at the facility are provided during, or immediately before or after, the employee's workday.

For purposes of this section, the term ''meals'' means food, beverages, and related services provided at the facility. If an employer can reasonably determine the number of meals that are excludable from income by the recipient employees under section 119, the employer may, in determining whether the requirement of paragraph (a)(1)(i) of this section is satisfied, disregard all costs and revenues attributable to such meals provided to such employees. If an employer can reasonably determine the number of meals received by volunteers who receive food and beverages at a hospital, free or at a discount, the employer may, in determining whether the requirement of paragraph (a)(1)(i) of this section is satisfied, disregard all costs and revenues attributable to such meals provided to such volunteers. If an employer charges nonemployees a greater amount than employees, in determining whether the requirement of paragraph (a)(1)(i) of this section is satisfied, the employer must disregard all costs and revenues attributable to such meals provided to such nonemployees.

(3) *Operation by the employer.* If an employer contracts with another to operate an eating facility for its employees, the facility is considered to be operated by the employer for purposes of this section. If an eating facility is operated by more than one employer, it is considered to be operated by each employer.

(4) *Example.* The provisions of this paragraph (a)(2) may be illustrated by the following example:

*Example 1.* Assume that a not-for-profit hospital system maintains cafeterias for the use of its employees and volunteers. Only the employees are charged for food service at the cafeteria and the policy of the hospital is to charge the employees only for the costs of food, beverage and labor directly attributable to the meal. Most of the cafeterias within the system furnish more free meals to volunteers than they serve paid meals to employees. For purposes of this paragraph, as long as the employer can accurately determine the number of meals received free or at a discount by volunteers, the employer may disregard all the costs and revenues attributable to such meals provided to volunteers. Therefore, for purposes of this paragraph, the costs of the hospital system for furnishing meals to employees who pay for them are the costs to be compared to determine if the revenues from the facility equal or exceed direct operating costs of the facility's service to employees.

(b) *Direct operating costs*—(1) *In general*. For purposes of this section, the direct operating costs of an eating facility are—

(i) The cost of food and beverages, and

(ii) The cost of labor for personnel whose services relating to the facility are performed primarily on the premises of the eating facility. Direct operating costs do not include the labor cost attributable to personnel whose services relating to the facility are not performed primarily on the premises of the eating facility. Thus, for example, the labor costs attributable to cooks, waiters, and waitresses are included in direct operating costs, but the labor cost attributable to a manager of an eating facility whose services relating to the facility are not primarily performed on the premises of the eating facility is not included in direct operating costs. If an employee performs services relating to the facility both on and off the premises of the eating facility, only the portion of the total labor cost of the employee relating to the facility that bears the same proportion to such total labor cost as time spent on the premises bears to total time spent performing services relating to the facility is included in direct operating costs. For example, assume that 60 percent of the services of a cook in the above example are not related to the eating facility. Only 40 percent of the total labor cost of the cook is includible in direct operating costs. For purposes of this section, labor costs include all compensation required to be reported on a Form W-2 for income tax purposes and related employment taxes paid by the employer. In determining the direct operating costs of an eating facility, the employer may include as part of the facility, vending machines that are provided by the employer and located on the same premises as the other eating facilities operated by the employer.

(2) *Multiple dining rooms or cafeterias*. The direct operating costs test may be applied separately for each dining room or cafeteria. Alternatively, the direct operating costs test may be applied with respect to all the eating facilities operated by the employer.

(3) *Payment to operator of facility*. If an employer contracts with another to operate an eating facility for its employees, the direct operating costs of the facility consist both of direct operating costs, if any, incurred by the employer and the amount paid to the operator of the facility to the extent that such amount is attributable to what would be direct operating costs if the employer operated the facility directly.

(c) *Valuation of non-excluded meals provided at an employer-operated eating facility for employees*. If the exclusion for meals provided at an employer-operated eating facility for employees is not available, the recipient of meals provided at such facility must include in income the amount by which the fair market value of the meals provided exceeds the sum of—

(1) The amount, if any, paid for the meals, and

(2) The amount, if any, specifically excluded by another section of chapter 1 of this subtitle.

For special valuation rules relating to such meals, see § 1.61–21(j).

[T.D. 8256, 54 FR 28617, July 6, 1989]

### § 1.132–7T Treatment of employer-operated eating facilities—1985 through 1988 (temporary).

(a) *In general*—(1) *General rule*. The value of meals provided to employees at an employer-operated eating facility for employees is excludable from gross income as a de minimis fringe only if—

(i) On an annual basis, the revenue from the facility equals or exceeds the direct operating costs of the facility, and

(ii) With respect to any officer, owner or highly compensated employee, access to the facility is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, and highly compensated employees. See §1.132–8T.

(2) *Employer-operated eating facility for employees.* An employer-operated eating facility for employees is a facility that meets all of the following conditions—

(i) The facility is owned or leased by the employer,

(ii) The facility is operated by the employer,

(iii) The facility is located on or near the business premises of the employer,

(iv) Substantially all of the use of the facility is by employees of the employer operating the facility, and

(v) The meals furnished at the facility are provided during, or immediately before or after, the employee's workday.

For purposes of this section, the term ''meals'' means food, beverages, and related services provided at the facility. If an employer can determine the number of employees who receive meals that are excludable from income under section 119, the employer may, in determining whether the requirement of paragraph (a)(1)(i) of this section is satisfied, disregard all costs and revenues attributable to such meals provided to such employees. For purposes of this section, each dining room or cafeteria in which meals are served is treated as a separate eating facility, regardless of whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(3) *Operation by the employer.* If an employer contracts with another to operate an eating facility for its employees, the facility is considered to be operated by the employer for purposes of this section. If an eating facility is operated by more than one employer, it is considered to be operated by each employer.

(b) *Direct operating costs.* The direct operating costs test must be applied separately for each dining room or cafeteria. For purpose of this section, the direct operating costs of an eating facilities are: (1) The cost of food and beverages and (2) the cost of labor for personnel whose services relating to the facility are performed primarily on the premises of the eating facility. Direct operating costs do not include the cost of labor for personnel whose services relating to the facility are not performed primarily on the premises of the eating facility. Thus, for example, the labor cost for cooks, waiters, and waitresses is included in direct operating costs, but the labor cost for a manager of an eating facility whose services relating to the facility are not primarily performed on the premises of the eating facility is not included in direct operating costs. If an employee perfoms services both on and off the premises of the eating facility, only the applicable percentage of the total labor cost of the employee that bears the same proportion as time spent on the premises bears to total time is included in direct operating costs. For example, assume that 60 percent of the services of the cooks in the above example are not related to the eating facility. Only 40 percent of the total labor cost of the cooks is includible in direct operating costs. For purposes of this section, labor costs include all compensation required to be reported on a Form W-2 for income tax purposes and related employment taxes paid by the employer.

(c) *Valuation of non-excluded meals provided at an employer-operated eating facility for employees.* If the exclusion for meals provided at an employer-operated eating facility for employees is not available, the recipient of meals provided at such facility must include in income the amount by which the fair market value of the meals provided exceeds the sume of: (1) The amount, if any, paid for the meals, and (2) the amount, if any, specifically excluded by another section of the Code. For special valuation rules relating to such meals see §1.61–2T (j).

[T.D. 8063, 50 FR 52308, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28600, July 6, 1989]

### § 1.132–8 Fringe benefit nondiscrimination rules.

(a) *Application of nondiscrimination rules*—(1) *General rule.* A highly compensated employee who receives a no-additional cost service, a qualified employee discount or a meal provided at an employer-operated eating facility for employees shall not be permitted to exclude such benefit from his or her income unless the benefit is available on substantially the same terms to:

(i) All employees of the employer; or

(ii) A group of employees of the employer which is defined under a reasonable classification set up by the employer that does not discriminate in favor of highly compensated employees. See paragraph (f) of this section for the definition of a highly compensated employee.

(2) *Consequences of discrimination*—(i) *In general.* If an employer maintains more than one fringe benefit program, *i.e.*, either different fringe benefits being provided to the same group of employees, or different classifications of employees or the same fringe benefit being provided to two or more classifications of employees, the nondiscrimination requirements of section 132 will generally be applied separately to each such program. Thus, a determination that one fringe benefit program discriminates in favor of highly compensated employees generally will not cause other fringe benefit programs covering the same highly compensated employees to be treated as discriminatory. If the fringe benefits provided to a highly compensated individual do not satisfy the nondiscrimination rules provided in this section, such individual shall be unable to exclude from gross income any portion of the benefit. For example, if an employer offers a 20 percent discount (which otherwise satisfies the requirements for a qualified employee discount) to all non-highly compensated employees and a 35 percent discount to all highly compensated employees, the entire value of the 35 percent discount (not just the excess over 20 percent) is includible in the gross income and wages of the highly compensated employees who make purchases at a discount.

(ii) *Exception*—(A) *Related fringe benefit programs.* If one of a group of fringe benefit programs discriminates in favor of highly compensated employees, no related fringe benefit provided to such highly compensated employees under any other fringe benefit program may be excluded from the gross income of such highly compensated employees. For example, assume a department store provides a 20 percent merchandise discount to all employees under one fringe benefit program. Assume further that under a second fringe benefit program, the department store provides an additional 15 percent merchandise discount to a group of employees defined under a classification which discriminates in favor of highly compensated employees. Because the second fringe benefit program is discriminatory, the 15 percent merchandise discount provided to the highly compensated employees is not a qualified employee discount. In addition, because the 20 percent merchandise discount provided under the first fringe benefit program is related to the fringe benefit provided under the second fringe benefit program, the 20 percent merchandise discount provided the highly compensated employees is not a qualified employee discount. Thus, the entire 35 percent merchandise discount provided to the highly compensated employees is includible in such employees' gross incomes.

(B) *Employer operated eating facilities for employees.* For purposes of paragraph (a)(2)(ii)(A) of this section, meals at different employer-operated eating facilities for employees are not related fringe benefits, so that a highly compensated employee may exclude from gross income the value of a meal at a nondiscriminatory facility even though any meals provided to him or her at a discriminatory facility cannot be excluded.

(3) *Scope of the nondiscrimination rules provided in this section.* The nondiscrimination rules provided in this section apply only to fringe benefits provided pursuant to section 132 (a)(1), (a)(2), and (e)(2). These rules have no application to any other employee benefit that may be subject to nondiscrimination requirements under any other section of the Code.

(b) *Aggregation of employees*—(1) *Section 132(a) (1) and (2).* For purposes of determining whether the exclusions for no-additional-cost services and qualified employee discounts are available to highly compensated employees, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers (as defined in §1.132–1(c)), except that employees in different lines of business (as defined in §1.132–4) are not to be aggregated. Thus, in general, for purposes of this section, the term ''employees of the employer'' refers to all employees of the employer and any other entity that is a member of a group described in sections 414 (b), (c), (m), or (o) and that performs services within the same line of business as the employer which provides the particular fringe benefit. Employees in different lines of business will be aggregated, however, if the line of business limitation has been relaxed pursuant to paragraphs (b) through (g) of §1.132–4.

(2) *Section 132 (e) (2).* For purposes of determining whether the exclusions for meals provided at employer-operated eating facilities are available to highly compensated, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers (as defined in section §1.132–1(c)) who regularly work at or near the premises on which the eating facility is located, except that employees in different lines of business (as defined in §1.132–4) are not to be aggregated. The nondiscrimination rules of this section are applied separately to each eating facility. Each dining room or cafeteria in which meals are served is treated as a separate eating facility, regardless of whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(3) *Classes of employees who may be excluded.* For purposes of applying the nondiscrimination rules of this section to a particular fringe benefit program, there may be excluded from consideration employees who may be excluded from consideration under section 89(h), as enacted by the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085 (1986) and amended by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, 102 Stat. 3342 (1988).

(c) *Availability on substantially the same terms*—(1) *General rule.* The determination of whether a benefit is available on substantially the same terms shall be made upon the basis of the facts and circumstances of each situation. In general, however, if any one of the terms or conditions governing the availability of a particular benefit to one or more employees varies from any one of the terms or conditions governing the availability of a benefit made available to one or more other employees, such benefit shall not be considered to be available on substantially the same terms except to the extent otherwise provided in paragraph (c)(2) of this section. For example, if a department store provides a 20 percent qualified employee discount to all of its employees on all merchandise, the substantially the same terms requirement will be satisfied. Similarly, if the discount provided to all employees is 30 percent on certain merchandise (such as apparel), and 20 percent on all other merchandise, the substantially the same terms requirement will be satisfied. However, if a department store provides a 20 percent qualified employee discount to all employees, but as to the employees in certain departments, the discount is available upon hire, and as to the remaining departments, the discount is only available when an employee has completed a specified term of services, the 20 percent discount is not available on substantially the same terms to all of the employees of the employer. Similarly, if a greater discount is given to employees with more seniority, full-time work status, or a particular job description, such benefit (*i.e.*, the discount) would not be available to all employees eligible for the discount on substantially the same terms, except to the extent otherwise provided in paragraph (c)(2) of this section. These examples also apply to no-additional-cost-services. Thus, if an employer charges non-highly compensated employees for a no-additional-cost service and does not charge highly compensated employees (or charges highly compensated employees a lesser amount), the substantially the same terms requirement will not be satisfied.

(2) *Certain terms relating to priority.* Certain fringe benefits made available

to employees are available only in limited quantities that may be insufficient to meet employee demand. This situation may occur either because of employer policy (such as where an employer determines that only a certain number of units of a specific product will be made available to employees each year) or because of the nature of the fringe benefit (such as where an employer provides a no-additional-cost transportation service that is limited to the number of seats available just before departure). Under these circumstances, an employer may find it necessary to establish some method of allocating the limited fringe benefits among the employees eligible to receive the fringe benefits. The employer may establish the priorities described below.

(i) *Priority on a first come, first served, or similar basis.* A benefit shall not fail to be treated as available to a group of employees on substantially the same terms merely because the employer allocates the benefit among such employees on a ''first come, first served'' or lottery basis, provided that the same notice of the terms of availability is given to all employees in the group and the terms under which the benefit is provided to employees within the group are otherwise the same with respect to all employees. For purposes of the preceding sentence, a program that gives priority to employees who are the first to submit written requests for the benefit will constitute priority on a ''first come, first served'' basis. Similarly, if the employer regularly engages in the practice of allocating benefits on a priority basis to employees demonstrating a critical need, such benefit shall not fail to be treated as available on substantially the same terms to all of the employees with respect to whom such priority status is available as long as the determination is based upon uniform and objective criteria which have been communicated to all employees in the group of eligible employees. An example of a critical need would be priority transportation given to an employee in the event of a medical emergency involving the employee (or a member of the employee's immediate family) or a recent death in the employee's immediate family. Frustrated vacation plans or forfeited deposits would not be treated as giving rise to particularly critical needs.

(ii) *Priority on the basis of seniority.* Solely for purposes of § 1.132–8, a benefit shall not fail to be treated as available to a group of employees of the employer on substantially the same terms merely because the employer allocates the benefit among such employees on a seniority basis provided that:

(A) The same notice of the terms of availability is given to all employees in the group; and

(B) The average value of the benefit provided for each nonhighly compensated employee is at least 75% of that provided for each highly compensated employee. For purposes of this test, the average value of the benefit provided for each nonhighly compensated (highly compensated) employee is determined by taking the sum of the fair market values of such benefit provided to all the nonhighly compensated (highly compensated) employees, determined in accordance with § 1.61–21, and then dividing that sum by the total number of nonhighly compensated (highly compensated) employees of the employer. For purposes of determining the average value of the benefit provided for each employee, all employee's of the employer are counted, including those who are not eligible to receive the benefit from the employer.

(d) *Testing for discrimination*—(1) *Classification test.* In the event that a benefit described in section 132 (a)(1), (a)(2) or (e)(2) is not available on substantially the same terms to all of the employees of the employer, no exclusion shall be available to a highly compensated employee for such benefit unless the program under which the benefit is provided satisfies the nondiscrimination standards set forth in this section. The nondiscrimination standard of this section will be satisfied only if the benefit is available on substantially the same terms to a group of employees of the employer which is defined under a reasonable classification established by the employer that does not discriminate in favor of highly compensated employees. The determination of whether a particular classification is discriminatory will generally depend upon the facts and circumstances involved, based upon principles similar to those applied for purposes of section 410(b)(2)(A)(i) or, for years commencing prior to January 1, 1988, section 410(b)(1)(B). Thus, in general, except as otherwise provided in this section, if a benefit is available on substantially the same terms to a group of employees which, when compared with all of the other employees of the employer, constitutes a nondiscriminatory classification under section 410(b)(2)(A)(i) (or, if applicable, section 410(b)(1)(B)), it shall be deemed to be nondiscriminatory.

(2) *Classifications that are per se discriminatory.* A classification that, on its face, makes fringe benefits available principally to highly compensated employees is per se discriminatory. In addition, a classification that is based on either an amount or rate of compensation is per se discriminatory if it favors those with the higher amount or rate of compensation. On the other hand, a classification that is based on factors such as seniority, full-time vs. part-time employment, or job description is not per se discriminatory but may be discriminatory as applied to the workforce of a particular employer.

(3) *Former employees.* When determining whether a classification is discriminatory, former employees shall be tested separately from other employees of the employer. Therefore, a classification is not discriminatory solely because the employer does not make fringe benefits available to any former employee. Whether a classification of former employees discriminates in favor of highly compensated employees will depend upon the particular facts and circumstances.

(4) *Restructuring of benefits.* For purposes of testing whether a particular group of employees would constitute a discriminatory classification for purposes of this section, an employer may restructure its fringe benefit program as described in this paragraph. If a fringe benefit is provided to more than one group of employees, and one or more such groups would constitute a discriminatory classification if considered by itself, then for purposes of this section, the employer may restructure its fringe benefit program so that all or some of the members of such group may be aggregated with another group, provided that each member of the restructured group will have available to him or her the same benefit upon the same terms and conditions. For example, assume that all highly compensated employees of an employer have fewer than five years of service and all nonhighly compensated employees have over five years of service. If the employer provided a five percent discount to employees with under five years of service and a ten percent discount to employees with over five years of service, the discount program available to the highly compensated employees would not satisfy the nondiscriminatory classification test; however, as a result of the rule described in this paragraph (d)(4), the employer could structure the program to consist of a five percent discount for all employees and a five percent additional discount for nonhighly compensated employees.

(5) *Employer-operated eating facilities for employees*—(i) *General rule.* If access to an employer-operated eating facility for employees is available to a classification of employees that discriminates in favor of highly compensated employees, then the classification will not be treated as discriminating in favor of highly compensated employees unless the facility is used by one or more executive group employees more than a de minimis amount.

(ii) *Executive group employee.* For purposes of this paragraph (d)(5), an employee is an "executive group employee" if the definition of paragraph (f)(1) of this section is satisfied. For purposes of identifying such employees, the phrase "top one percent of the employees" is substituted for the phrase "top ten percent of the employees" in section 414(q)(4) (relating to the definition of "top-paid group").

(e) *Cash bonuses or rebates.* A cash bonus or rebate provided to an employee by an employer that is determined with reference to the value of employer-provided property or services purchased by the employee, is treated as an equivalent employee discount. For example, assume a department store provides a 20 percent merchandise discount to all employees under a fringe benefit program. In addition, assume that the department store provides cash bonuses to a group of employees defined under a classification which discriminates in favor of highly compensated employees. Assume further that such cash bonuses equal 15 percent of the value of merchandise purchased by each employee. This arrangement is substantively identical to the example described in paragraph (e)(2)(i) of this section concerning related fringe benefit programs. Thus, both the 20 percent merchandise discount and the 15 percent cash bonus provided to the highly compensated employees are includible in such employees' gross incomes.

(f) *Highly compensated employee*—(1) *Government and nongovernment employees.* A highly compensated employee of any employer is any employee who, during the year or the preceding year—

(i) Was a 5-percent owner,

(ii) Received compensation from the employer in excess of $75,000,

(iii) Received compensation from the employer in excess of $50,000 and was in the top-paid group of employees for such year, or

(iv) Was at any time an officer and received compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for such year.

For purposes of determining whether an employee is a highly compensated employee, the rules of sections 414 (q), (s), and (t) apply.

(2) *Former employees.* A former employee shall be treated as a highly compensated employee if—

(i) The employee was a highly compensated employee when the employee separated from service, or

(ii) The employee was a highly compensated employee at any time after attaining age 55.

[T.D. 8256, 54 FR 28618, July 6, 1989]

### § 1.132–8T Nondiscrimination rules—1985 through 1988 (temporary).

(a) *Application of nondiscrimination rules*—(1) *General rule.* To qualify under section 132 for the exclusions for non-additional-cost services, qualified employee discounts, or meals provided at employer-operated eating facilities for employees, the fringe benefit must be available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, or highly compensated employees (the "prohibited group employees").

(2) *Consequences of discrimination.* If the availability of or the provision of the fringe benefit does not satisfy the nondiscrimination rules provided in this section, the exclusion applies only to those employees (if any) who receive the benefit and who are not prohibited group employees. For example, if an employer offers a 20 percent discount (which otherwise satisfies the requirements for a qualified employee discount) to all nonprohibited group employees and a 35 percent discount to all prohibited group employees, the entire value of the 35 percent discount (not just the excess over 20 percent) is includible in the gross income and wages of the prohibited group employees who make purchases at a discount.

(3) *Scope of the nondiscrimination rules provided in this section.* The nondiscrimination rules provided in this section apply only to fringe benefits provided pursuant to section 132 (a)(1), (a)(2), and (e)(2). These rules have no application to any other employee benefit that may be subject to nondiscrimination requirements under any other section of the Code.

(b) *Coverage requirement*—(1) *Section 132 (a)(1) and (2).* For purposes of the exclusions for no-additional-cost services and qualified employee discounts, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers (as defined in §1.132–1T (c)), but without aggregating employees in different lines of business (as defined in §1.132–4T). Employees in different lines of business will be aggregated, however, if the line of business limitation has been relaxed pursuant to either section 1.132–4T (b) or (c). Except as provided in paragraph (e) of this section, the nondiscrimination rules of this section are generally applied separately to each fringe benefit program of an employer.

(2) *Section 132(e)(2).* For purposes of the exclusion for meals provided at employer-operated eating facilities for employees, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers, without regard to different lines of business, who regularly work at or near the premises on which the eating facility is located. The nondiscrimination rules of this section are applied separately to each eating facility. Each dining room or cafeteria in which meals are served is treated as a separate eating facility, regardless of whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(3) *Classes of employees who may be excluded.* Except as otherwise provided in this section, for purposes of applying the nondiscrimination rules of this section to a particular fringe benefit program, there may be excluded from consideration the following classes of employees provided that, with respect to each class (other than the class described in paragraph (b)(3)(iii) of this section), all employees in the class are excluded from participating in the particular fringe benefit program—

(i) All part-time or seasonal employees who are (or who are reasonably expected to be) credited with less than 1,000 hours (or such lesser number required for the program) of service during a calendar year;

(ii) All employees who are included in a unit of employees covered by an agreement with the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that the particular fringe benefit program was the subject of good faith bargaining between such employee representatives and such employer or employers (and if, after March 31, 1984, the additional condition of section 7701(a)(46) is satisfied);

(iii) All employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from services within the United States (within the meaning of section 861(a)(3));

(iv) All employees who have not completed at least one year (or such lesser period required for the program) of service with the employer;

(v) All employees who have separated from the service of the employer in a year prior to the current year (regardless of the reason for the separation);

(vi) All employees who have separated from the service of the employer in a year prior to the current year except for retired and/or disabled employees (either with or without a time limit based on a set number of years since separation from the service of the employer); and

(vii) All employees of a leased section of a department store.

(c) *Classification requirement*—(1) *General rule.* The determination of whether a particular classification established by an employer discriminates in favor of the prohibited group will depend on the facts and circumstances involved, based on principles similar to those applied in the qualified plan area (see section 410(b)(1)(B) and the regulations thereunder). In general, except as otherwise provided in this section, a classification that would be determined to be nondiscriminatory pursuant to the application of the nondiscrimination standards that are applied in the qualified plan area shall be deemed to be nondiscriminatory for purposes of section 132.

(2) *Classifications that are per se discriminatory.* A classification that, on its face, makes fringe benefits available only to prohibited group employees is per se discriminatory, and no exclusion from gross income is available to any prohibited group employee under section 132. In addition, a classification that is based on either an amount or rate of compensation is per se discriminatory if it favors those with the higher amount or rate of compensation. On the other hand, a classification that is based on factors such as seniority, full-time vs. part-time employment, or job description is not per se discriminatory but may be discriminatory as applied to the workforce of a particular employer.

(3) *Former employees.* When determining whether a classification is discriminatory, former employees shall not be considered together with other

employees of the employer. Therefore, a classification is not discriminatory if the employer does not make the fringe benefits available to any former employee. Whether a classification of former employees discriminates in favor of prohibited group employees will depend on the facts and circumstances. The rules of this section shall apply separately to the former employee classification.

(4) *Employer-operated eating facilities for employees*—(i) *General rule.* If access to an employer-operated eating facility for employees is available to a classification of employees that discriminates in favor of highly compensated employees, the classification will not be treated as discriminating in favor of the prohibited group employees unless the facility is used, more than a de minimis amount, by any executive group employee.

(ii) *Executive group employees.* For purposes of this paragraph (c)(4), the term ''executive group employees'' has the same meaning as the term ''prohibited group employees'' (as defined in paragraph (g) of this section), except that for purposes of identifying highly compensated employees—

(A) The exception provided in paragraph (g)(1)(i)(A) of this section does not apply, and

(B) The phrase ''highest-paid one percent of all employees of an employer'' is substituted for the phrase ''highest-paid ten percent of all employees of an employer'' in paragraph (g)(1)(ii)(A) of this section.

(d) *Substantially-the-same-terms requirement*—(1) *General rule.* Fringe benefits available to a particular classification of employees must be available to each employee in the classification on substantially the same terms. The determination of whether this requirement is met shall depend on the facts and circumstances involved. For example, if a department store provides a 20 percent qualified employee discount to its employees on all merchandise, the substantially-the-same-terms requirement will be satisfied. Similarly, if the discount provided to all employees is 30 percent on certain merchandise (such as apparel), and 20 percent on all other merchandise, the substantially-the-same-terms requirement will be satisfied. However, if the discount provided is 20 percent on all merchandise for hourly employees and 30 percent on all merchandise for salaried employees, the substantially-the-same-terms requirement will not be satisfied. In addition, if the percentage discount varies depending on either an employee's amount or rate of compensation, or volume of purchases, the substantially-the-same-terms requirement will not be satisfied. In order to determine whether such a discount program satisfies the nondiscrimination requirements of section 132, each group of employees that does receive fringe benefits on substantially the same terms must be treated as a separate classification. However, subject to the rules of paragraph (e)(2) of this section, an employer may divide a fringe benefit program into two programs for purposes of aggregating groups of employees. See Example (1) of paragraph (d)(3) of this section.

(2) *Terms relating to priority.* Certain fringe benefits made available to employees are available only in limited quantities that may be insufficient to meet employee demand. This may occur either because of employer policy (such as where an employer determines that only a certain number of units of a specific product will be made available to employees each year) or because of the nature of the fringe benefit (such as where an employer provides a no-additional-cost transportation service that is limited to the number of seats available just before departure). Under these circumstances, an employer may find it necessary to establish some method of allocating the limited fringe benefits among the employees eligible to receive the fringe benefits. An allocation among employees on a ''first-come, first-served'' basis will not violate the substantially-the-same-terms requirement provided that such an allocation is not discriminatory in practice. In addition, an allocation among employees on a lottery basis will not violate the substantially-the-same-terms requirement provided that such an allocation is nondiscriminatory in practice. For example, assume that an employer has a limited number of a particular benefit to offer to its employees. Assume further that

the employees interested in receiving the benefit submit their names to the employer who then selects a number of names, at random, equal to the number of fringe benefits available. This lottery system would not violate the substantially-the-same-terms requirement. An allocation among employees on other than a ''first-come, first-served'', lottery, or similar basis will violate the substantially-the-same-terms requirement. Therefore, an allocation based on seniority, full-time vs. part-time employment, or job description will violate the substantially-the-same-terms requirement. In order to determine whether such a fringe benefit program satisfies the nondiscrimination requirements of section 132, each group of employees that does receive fringe benefits on substantially the same terms must be treated as a separate classification. For purposes of this rule, the last two sentences of paragraph (d)(1) of this section apply.

(3) *Examples.* The followings examples illustrate the provisions of this paragraph (d):

*Example 1.* Assume that with respect to a benefit available in limited quantities an employer provides priority to employees based on seniority. Assume further that all non-prohibited group employees have ten years of seniority and all prohibited group employees have nine years seniority. If each of these groups were tested separately, the benefits offered to prohibited group employees would be discriminatory under this section. In this case, the employer could divide the fringe benefit program provided to non-prohibited group employees into two parts: one relating to nine years of seniority and one relating to an additional year of seniority. As restructured in this manner, all employees receive the benefit relating to nine years seniority and only non-prohibited group employees receive the benefit relating to an additional year of seniority. Both groups (all employees and all non-prohibited group employees) are nondiscriminatory groups.

*Example 2.* Assume that prices charged to prohibited group employees at an employer-operated eating facility for employees are lower than prices charged to non-prohibited group employees. The substantially-the-same requirement is not satisfied.

(4) *Disproportionate use of eating facility.* If access to an employer-operated eating facility for employees is technically available on substantially-the-same-terms (to (i) all employees who regularly work at or near the premises on which the eating facility is located (the employee group), or (ii) a nondiscriminatory classification of the employee group, but in practice a highly disproportionate number of the prohibited group employees in the employee group, compared to the non-prohibited group employees in the employee group, use the facility, the substantially-the-same-terms requirement will not be satisfied unless no member of the executive group eats there more than a de minimis amount.

(e) *Aggregation of separate fringe benefit programs*—(1) *General rule.* If an employer maintains more than one fringe benefit program, *i.e.*, two or more classifications of employees providing either identical or different fringe benefits, the nondiscrimination requirements of section 132 will generally be applied separately to each such program. Thus, a determination that one fringe benefit program discriminates in favor of prohibited group employees generally will not cause other fringe benefit programs covering the same prohibited group employees to be treated as discriminatory.

(2) *Exception*—(i) *Related fringe benefit programs.* If one of a group of fringe benefit programs discriminates in favor of prohibited group employees, no related fringe benefit provided to such prohibited group employees under any other fringe benefit program may be excluded from the gross income of such prohibited group employees. For example, assume a department store provides a 20 percent merchandise discount to all employees under one fringe benefit program. Assume further that under a second fringe benefit program, the department store provides an additional 15 percent merchandise discount to a group of employees defined under a classification which discriminates in favor of the prohibited group. Because the second fringe benefit program is discriminatory, the 15 percent merchandise discount provided to the prohibited group employees is not a qualified employee discount. In addition, because the 20 percent merchandise discount provided under the first fringe benefit program is related to the fringe benefit provided under the second

fringe benefit program, the 20 percent merchandise discount provided the prohibited group employees is not a qualified employee discount. Thus, the entire 35 percent merchandise discount provided to the prohibited group employees is includible in such employees' gross incomes.

(ii) *Employer-operated eating facilities for employees.* For purposes of paragraph (e)(2)(i) of this section, meals at different employer-operated eating facilities for employees are not related fringe benefits, so that a prohibited group employee may exclude the value of a meal at a nondiscriminatory facility even though any meals provided to him or her at the discriminatory facility cannot be excluded.

(f) *Cash bonuses or rebates.* A cash bonus or rebate provided to an employee by an employer that is determined pursuant to the value of employer-provided property or services purchased by the employee, is treated as an equivalent employee discount. For example, assume a department store provides a 20 percent merchandise discount to all employees under a fringe benefit program. In addition, assume that the department store provides cash bonuses to a group of employees defined under a classification which discriminates in favor of the prohibited group. Assume further that such cash bonuses equal 15 percent of the value of merchandise purchased by each employee. This arrangement is substantively identical to the example described in paragraph (e)(2) of this section. Thus, both the 20 percent merchandise discount and the 15 percent cash bonus provided to the prohibited group employees are includible in such employees' gross incomes.

(g) *Prohibited group employees*—(1) *Highly compensated*—(i) *General rule.* Except as otherwise provided in this paragraph (g)(1)(i), any employee of an employer who has (or is reasonably expected to have) compensation during a calendar year equal to or greater than the employer's base compensation amount is highly compensated. There are two exceptions to this rule:

(A) Any employee who has (or is reasonably expected to have) compensation during a calendar year equal to or greater than $50,000 is highly compensated, regardless of whether such compensation is in excess of the base compensation amount, and

(B) Any employee who is reasonably expected to have compensation during a calendar year equal to or less than $20,000 is not highly compensated, unless no employee of the employer is reasonably expected to have compensation equal to or greater than $35,000.

The determination of whether an employee is a highly compensated employee will be determined based on the entire employee workforce of all employers aggregated pursuant to the rules of section 414 (b), (c), or (m) without regard to the regular workplace of the employees.

(ii) *Base compensation amount*—(A) *General rule.* The term ''base compensation amount'' is defined as that amount corresponding to the lowest annual compensation amount received by the highest-paid ten percent of all employees of an employer (the number of employees in the top ten percent will be increased to the next highest integer if necessary), determined on the basis of the preceding calendar year. For purposes of this paragraph (g)(1)(ii), the term ''employer'' includes all entities that would be aggregated pursuant to the rules of section 414 (b), (c), or (m).

(B) *Employees that are excluded.* For purposes of determining the base compensation amount with respect to a fringe benefit program, employees described in paragraph (b)(3) of this section are excluded whether or not they are covered under the fringe benefit program, except that: (*1*) Employees described in paragraph (b)(3)(ii) of this section are taken into account with respect to the program even if they are excluded under paragraph (b)(3), and (*2*) employees described in paragraph (b)(3) (i) and (iv) of this section are taken into account with respect to the program unless they are excluded under paragraph (b)(3).

(C) *Exception to preceding calendar year rule.* In the case of an employer's first year of operation, or where an employer's business has changed significantly from the prior calendar year (e.g., due to an acquisition or merger), the employer must make a good faith attempt to either determine or adjust the base compensation amount for the current year based on reasonable estimates of current year compensation.

(iii) *Compensation.* The term ''compensation'' is defined as the amount reportable on a Form W-2 as income. Amounts that would be excluded from income but for section 132(h)(1) are not included in compensation for purposes of this paragraph (g)(1). Compensation includes amounts received from all entities which would be treated as a single employer under section 414 (b), (c), or (m) and is not restricted to amounts received with respect to any one line of business.

(iv) *Employee.* Generally, for purposes of determining whether an employee is highly compensated under this paragraph (g)(1), the term ''employee'' does not include any individual who does not perform services for the employer as an employee during the calendar year. For example, if an employer has active employees, retired or disabled employees, and widows or widowers who are ''employees'' under section 132(f)(1)(B), the general rule (described in paragraph (g)(1)(i) of this section) applies only to the active employees.

(2) *Owner*—(i) *General rule.* For purposes of this section, the term ''owner'' means any employee who owns a one percent or greater interest in either the employer or in any entity that would be aggregated with the employer pursuant to the rules of section 414 (b), (c), or (m). In addition, such an employee shall be treated as an owner of all entities that would be aggregated with the employer pursuant to the rules of section 414 (b), (c), or (m).

(ii) *Determining ownership.* Ownership in a corporation shall be determined pursuant to the rules of section 318(a). For purposes of determining ownership in an entity other than a corporation, the rules of section 318(a) shall apply in a manner similar to the way in which they apply for purposes of determining ownership in a corporation. For noncorporate interests, capital or profits interest must be substituted for stock.

(3) *Officer*—(i) *Non-government.* For purposes of this section, an officer of a non-government employer is any employee who is appointed, confirmed, or elected by the Board or shareholders of the employer. An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c), or (m). The number of officers is not to exceed one-percent of the total number of employees of all entities treated as a single employer pursuant to section 414 (b), (c), or (m) (increased to the next highest integer, if necessary). If the number of officers exceeds one-percent of all employees, then the limitation is to be applied to employees in descending order of compensation (as defined in paragraph (g)(1)(iii) of this section). Thus, if an employer with 1,000 employees has 11 board-appointed officers, the employee with the least compensation of those officers would not be an officer under this paragraph (g)(3)(i). In determining the total number of employees with respect to a fringe benefit program, employees described in paragraph (b)(3) of this section are excluded whether or not they are covered under the fringe benefit program, except that (A) employees described in paragraph (b)(3)(ii) of this section are taken into account with respect to the program even if they are excluded under paragraph (b)(3), and (B) employees described in paragraph (b)(3) (i) and (iv) of this section are taken into account with respect to the program unless they are excluded under paragraph (b)(3).

(ii) *Government.* For purposes of this section, an officer of a government employer is any—

(A) Elected official,

(B) Federal employee appointed by the President and confirmed by the Senate. However, in the case of any commissioned officer of the United States Armed Forces, an officer is any employee with the rank of brigadier general or rear admiral (lower half) or above, and

(C) State or local executive officer comparable to individuals described in paragraphs (g)(3)(ii) (A) and (B) of this section.

For purposes of this paragraph (g)(3)(ii), the term ''government'' includes any Federal, state, or local governmental unit, and any agency or instrumentality thereof.

(4) *Former employees.* [Reserved]

[T.D. 8063, 50 FR 52309, Dec. 23, 1985, as amended by T.D. 8256, 54 FR 28600, July 6, 1989]

## § 1.132–9 Qualified transportation fringes.

(a) *Table of contents.* This section contains a list of the questions and answers in § 1.132–9.



(b) *Questions and answers.*

Q–1. What is a qualified transportation fringe?

A–1. (a) The following benefits are qualified transportation fringe benefits:

(1) Transportation in a commuter highway vehicle.

(2) Transit passes.

(3) Qualified parking.

(b) An employer may simultaneously provide an employee with any one or more of these three benefits.

Q–2. What is transportation in a commuter highway vehicle?

A–2. Transportation in a commuter highway vehicle is transportation provided by an employer to an employee in connection with travel between the employee's residence and place of employment. A commuter highway vehicle is a highway vehicle with a seating capacity of at least 6 adults (excluding the driver) and with respect to which at least 80 percent of the vehicle's mileage for a year is reasonably expected to be—

(a) For transporting employees in connection with travel between their residences and their place of employment; and

(b) On trips during which the number of employees transported for commuting is at least one-half of the adult seating capacity of the vehicle (excluding the driver).

Q–3. What are transit passes?

A–3. A transit pass is any pass, token, farecard, voucher, or similar item (including an item exchangeable for fare media) that entitles a person to transportation—

(a) On mass transit facilities (whether or not publicly owned); or

(b) Provided by any person in the business of transporting persons for compensation or hire in a highway vehicle with a seating capacity of at least 6 adults (excluding the driver).

Q–4. What is qualified parking?

A–4. (a) Qualified parking is parking provided to an employee by an employer—

(1) On or near the employer's business premises; or

(2) At a location from which the employee commutes to work (including commuting by carpool, commuter highway vehicle, mass transit facilities, or transportation provided by any person in the business of transporting persons for compensation or hire).

(b) For purposes of section 132(f), parking on or near the employer's business premises includes parking on or near a work location at which the employee provides services for the employer. However, qualified parking does not include—

(1) The value of parking provided to an employee that is excludable from gross income under section 132(a)(3) (as a working condition fringe), or

(2) Reimbursement paid to an employee for parking costs that is excludable from gross income as an amount treated as paid under an accountable plan. See §1.62–2.

(c) However, parking on or near property used by the employee for residential purposes is not qualified parking.

(d) Parking is provided by an employer if—

(1) The parking is on property that the employer owns or leases;

(2) The employer pays for the parking; or

(3) The employer reimburses the employee for parking expenses (see Q/A–16 of this section for rules relating to cash reimbursements).

Q–5. May qualified transportation fringes be provided to individuals who are not employees?

A–5. An employer may provide qualified transportation fringes only to individuals who are currently employees of the employer at the time the qualified transportation fringe is provided. The term employee for purposes of qualified transportation fringes is defined in §1.132–1(b)(2)(i). This term includes only common law employees and other statutory employees, such as officers of corporations. See Q/A–24 of this section for rules regarding partners, 2-percent shareholders, and independent contractors.

Q–6. Must a qualified transportation fringe benefit plan be in writing?

A–6. No. Section 132(f) does not require that a qualified transportation fringe benefit plan be in writing.

Q–7. Is there a limit on the value of qualified transportation fringes that may be excluded from an employee's gross income?

A–7. (a) *Transportation in a commuter highway vehicle and transit passes.* Before January 1, 2002, up to $65 per month is excludable from the gross income of an employee for transportation in a commuter highway vehicle and transit passes provided by an employer. On January 1, 2002, this amount is increased to $100 per month.

(b) *Parking.* Up to $175 per month is excludable from the gross income of an employee for qualified parking.

(c) *Combination.* An employer may provide qualified parking benefits in addition to transportation in a commuter highway vehicle and transit passes.

(d) *Cost-of-living adjustments.* The amounts in paragraphs (a) and (b) of this Q/A–7 are adjusted annually, beginning with 2000, to reflect cost-of-living. The adjusted figures are announced by the Service before the beginning of the year.

Q–8. What amount is includible in an employee's wages for income and employment tax purposes if the value of the qualified transportation fringe exceeds the applicable statutory monthly limit?

A–8. (a) Generally, an employee must include in gross income the amount by which the fair market value of the benefit exceeds the sum of the amount, if any, paid by the employee and any amount excluded from gross income under section 132(a)(5). Thus, assuming no other statutory exclusion applies, if an employer provides an employee with a qualified transportation fringe that exceeds the applicable statutory monthly limit and the employee does not make any payment, the value of the benefits provided in excess of the applicable statutory monthly limit is included in the employee's wages for income and employment tax purposes. See §1.61–21(b)(1).

(b) The following examples illustrate the principles of this Q/A–8:

*Example 1.* (i) For each month in a year in which the statutory monthly transit pass limit is $100 (*i.e.*, a year after 2001), Employer M provides a transit pass valued at $110 to Employee D, who does not pay any amount to Employer M for the transit pass.

(ii) In this *Example 1*, because the value of the monthly transit pass exceeds the statutory monthly limit by $10, $120 ($110—$100, times 12 months) must be included in D's wages for income and employment tax purposes for the year with respect to the transit passes.

*Example 2.* (i) For each month in a year in which the statutory monthly qualified parking limit is $175, Employer M provides qualified parking valued at $195 to Employee E, who does not pay any amount to M for the parking.

(ii) In this *Example 2*, because the fair market value of the qualified parking exceeds the statutory monthly limit by $20, $240 ($195—$175, times 12 months) must be included in Employee E's wages for income and employment tax purposes for the year with respect to the qualified parking.

*Example 3.* (i) For each month in a year in which the statutory monthly qualified parking limit is $175, Employer P provides qualified parking with a fair market value of $220 per month to its employees, but charges each employee $45 per month.

(ii) In this *Example 3*, because the sum of the amount paid by an employee ($45) plus the amount excludable for qualified parking ($175) is not less than the fair market value of the monthly benefit, no amount is includible in the employee's wages for income and employment tax purposes with respect to the qualified parking.

Q–9. Are excludable qualified transportation fringes calculated on a monthly basis?

A–9. (a) *In general.* Yes. The value of transportation in a commuter highway vehicle, transit passes, and qualified parking is calculated on a monthly basis to determine whether the value of the benefit has exceeded the applicable statutory monthly limit on qualified transportation fringes. Except in the case of a transit pass provided to an employee, the applicable statutory monthly limit applies to qualified transportation fringes used by the employee in a month. Monthly exclusion amounts are not combined to provide a qualified transportation fringe for any month exceeding the statutory limit. A month is a calendar month or a substantially equivalent period applied consistently.

(b) *Transit passes.* In the case of transit passes provided to an employee, the applicable statutory monthly limit applies to the transit passes provided by the employer to the employee in a month for that month or for any previous month in the calendar year. In addition, transit passes distributed in advance for more than one month, but not for more than twelve months, are qualified transportation fringes if the requirements in paragraph (c) of this Q/A–9 are met (relating to the income tax and employment tax treatment of advance transit passes). The applicable statutory monthly limit under section 132(f)(2) on the combined amount of transportation in a commuter highway vehicle and transit passes may be calculated by taking into account the monthly limits for all months for which the transit passes are distributed. In the case of a pass that is valid for more than one month, such as an annual pass, the value of the pass may be divided by the number of months for which it is valid for purposes of determining whether the value of the pass exceeds the statutory monthly limit.

(c) *Rule if employee's employment terminates*—(1) *Income tax treatment.* The value of transit passes provided in advance to an employee with respect to a month in which the individual is not an employee is included in the employee's wages for income tax purposes.

(2) *Reporting and employment tax treatment.* Transit passes distributed in advance to an employee are excludable from wages for employment tax purposes under sections 3121, 3306, and 3401

(FICA, FUTA, and income tax withholding) if the employer distributes transit passes to the employee in advance for not more than three months and, at the time the transit passes are distributed, there is not an established date that the employee's employment will terminate (for example, if the employee has given notice of retirement) which will occur before the beginning of the last month of the period for which the transit passes are provided. If the employer distributes transit passes to an employee in advance for not more than three months and at the time the transit passes are distributed there is an established date that the employee's employment will terminate, and the employee's employment does terminate before the beginning of the last month of the period for which the transit passes are provided, the value of transit passes provided for months beginning after the date of termination during which the employee is not employed by the employer is included in the employee's wages for employment tax purposes. If transit passes are distributed in advance for more than three months, the value of transit passes provided for the months during which the employee is not employed by the employer is includible in the employee's wages for employment tax purposes regardless of whether at the time the transit passes were distributed there was an established date of termination of the employee's employment.

(d) *Examples.* The following examples illustrate the principles of this Q/A–9:

*Example 1.* (i) Employee E incurs $150 for qualified parking used during the month of June of a year in which the statutory monthly parking limit is $175, for which E is reimbursed $150 by Employer R. Employee E incurs $180 in expenses for qualified parking used during the month of July of that year, for which E is reimbursed $180 by Employer R.

(ii) In this *Example 1,* because monthly exclusion amounts may not be combined to provide a benefit in any month greater than the applicable statutory limit, the amount by which the amount reimbursed for July exceeds the applicable statutory monthly limit ($180 minus $175 equals $5) is includible in Employee E's wages for income and employment tax purposes.

*Example 2.* (i) Employee F receives transit passes from Employer G with a value of $195 in March of a year (for which the statutory monthly transit pass limit is $65) for January, February, and March of that year. F was hired during January and has not received any transit passes from G.

(ii) In this *Example 2,* the value of the transit passes (three months times $65 equals $195) is excludable from F's wages for income and employment tax purposes.

*Example 3.* (i) Employer S has a qualified transportation fringe benefit plan under which its employees receive transit passes near the beginning of each calendar quarter for that calendar quarter. All employees of Employer S receive transit passes from Employer S with a value of $195 on March 31 for the second calendar quarter covering the months April, May, and June (of a year in which the statutory monthly transit pass limit is $65).

(ii) In this *Example 3,* because the value of the transit passes may be calculated by taking into account the monthly limits for all months for which the transit passes are distributed, the value of the transit passes (three months times $65 equals $195) is excludable from the employees' wages for income and employment tax purposes.

*Example 4.* (i) Same facts as in *Example 3,* except that Employee T, an employee of Employer S, terminates employment with S on May 31. There was not an established date of termination for Employee T at the time the transit passes were distributed.

(ii) In this *Example 4,* because at the time the transit passes were distributed there was not an established date of termination for Employee T, the value of the transit passes provided for June ($65) is excludable from T's wages for employment tax purposes. However, the value of the transit passes distributed to Employee T for June ($65) is not excludable from T's wages for income tax purposes.

(iii) If Employee T's May 31 termination date was established at the time the transit passes were provided, the value of the transit passes provided for June ($65) is included in T's wages for both income and employment tax purposes.

*Example 5.* (i) Employer F has a qualified transportation fringe benefit plan under which its employees receive transit passes semi-annually in advance of the months for which the transit passes are provided. All employees of Employer F, including Employee X, receive transit passes from F with a value of $390 on June 30 for the 6 months of July through December (of a year in which the statutory monthly transit pass limit is $65). Employee X's employment terminates and his last day of work is August 1. Employer F's other employees remain employed throughout the remainder of the year.

(ii) In this *Example 5,* the value of the transit passes provided to Employee X for the months September, October, November, and

December ($65 times 4 months equals $260) of the year is included in X's wages for income and employment tax purposes. The value of the transit passes provided to Employer F's other employees is excludable from the employees' wages for income and employment tax purposes.

*Example 6.* (i) Each month during a year in which the statutory monthly transit pass limit is $65, Employer R distributes transit passes with a face amount of $70 to each of its employees. Transit passes with a face amount of $70 can be purchased from the transit system by any individual for $65.

(ii) In this *Example 6,* because the value of the transit passes distributed by Employer R does not exceed the applicable statutory monthly limit ($65), no portion of the value of the transit passes is included as wages for income and employment tax purposes.

Q–10. May an employee receive qualified transportation fringes from more than one employer?

A–10. (a) *General rule.* Yes. The statutory monthly limits described in Q/A–7 of this section apply to benefits provided by an employer to its employees. For this purpose, all employees treated as employed by a single employer under section 414(b), (c), (m), or (o) are treated as employed by a single employer. See section 414(t) and §1.132–1(c). Thus, qualified transportation fringes paid by entities under common control under section 414(b), (c), (m), or (o) are combined for purposes of applying the applicable statutory monthly limit. In addition, an individual who is treated as a leased employee of the employer under section 414(n) is treated as an employee of that employer for purposes of section 132. See section 414(n)(3)(C).

(b) *Examples.* The following examples illustrate the principles of this Q/A–10:

*Example 1.* (i) During a year in which the statutory monthly qualified parking limit is $175, Employee E works for Employers M and N, who are unrelated and not treated as a single employer under section 414(b), (c), (m), or (o). Each month, M and N each provide qualified parking benefits to E with a value of $100.

(ii) In this *Example 1,* because M and N are unrelated employers, and the value of the monthly parking benefit provided by each is not more than the applicable statutory monthly limit, the parking benefits provided by each employer are excludable as qualified transportation fringes assuming that the other requirements of this section are satisfied.

*Example 2.* (i) Same facts as in Example 1, except that Employers M and N are treated as a single employer under section 414(b).

(ii) In this *Example 2,* because M and N are treated as a single employer, the value of the monthly parking benefit provided by M and N must be combined for purposes of determining whether the applicable statutory monthly limit has been exceeded. Thus, the amount by which the value of the parking benefit exceeds the monthly limit ($200 minus the monthly limit amount of $175 equals $25) for each month in the year is includible in E's wages for income and employment tax purposes.

Q–11. May qualified transportation fringes be provided to employees pursuant to a compensation reduction agreement?

A–11. Yes. An employer may offer employees a choice between cash compensation and any qualified transportation fringe. An employee who is offered this choice and who elects qualified transportation fringes is not required to include the cash compensation in income if—

(a) The election is pursuant to an arrangement described in Q/A–12 of this section;

(b) The amount of the reduction in cash compensation does not exceed the limitation in Q/A–13 of this section;

(c) The arrangement satisfies the timing and reimbursement rules in Q/A–14 and 16 of this section; and

(d) The related fringe benefit arrangement otherwise satisfies the requirements set forth elsewhere in this section.

Q–12. What is a compensation reduction election for purposes of section 132(f)?

A–12. (a) *Election requirements generally.* A compensation reduction arrangement is an arrangement under which the employer provides the employee with the right to elect whether the employee will receive either a fixed amount of cash compensation at a specified future date or a fixed amount of qualified transportation fringes to be provided for a specified future period (such as qualified parking to be used during a future calendar month). The employee's election must be in writing or another form, such as electronic, that includes, in a permanent and verifiable form, the information required to be in the election. The election must contain the date of the election, the amount of the compensation to be reduced, and the period for which the benefit will be provided. The election must relate to a fixed dollar amount or fixed percentage of compensation reduction. An election to reduce compensation for a period by a set amount for such period may be automatically renewed for subsequent periods.

(b) *Automatic election permitted.* An employer may provide under its qualified transportation fringe benefit plan that a compensation reduction election will be deemed to have been made if the employee does not elect to receive cash compensation in lieu of the qualified transportation fringe, provided that the employee receives adequate notice that a compensation reduction will be made and is given adequate opportunity to choose to receive the cash compensation instead of the qualified transportation fringe. See §1.401(a)–21 of this chapter for rules permitting the use of electronic media to make participant elections with respect to employee benefit arrangements.

Q–13. Is there a limit to the amount of the compensation reduction?

A–13. Yes. Each month, the amount of the compensation reduction may not exceed the combined applicable statutory monthly limits for transportation in a commuter highway vehicle, transit passes, and qualified parking. For example, for a year in which the statutory monthly limit is $65 for transportation in a commuter highway vehicle and transit passes, and $175 for qualified parking, an employee could elect to reduce compensation for any month by no more than $240 ($65 plus $175) with respect to qualified transportation fringes. If an employee were to elect to reduce compensation by $250 for a month, the excess $10 ($250 minus $240) would be includible in the employee's wages for income and employment tax purposes.

Q–14. When must the employee have made a compensation reduction election and under what circumstances may the amount be paid in cash to the employee?

A–14. (a) The compensation reduction election must satisfy the requirements set forth under paragraphs (b), (c), and (d) of this Q/A–14.

(b) *Timing of election.* The compensation reduction election must be made before the employee is able currently to receive the cash or other taxable amount at the employee's discretion. The determination of whether the employee is able currently to receive the cash does not depend on whether it has been constructively received for purposes of section 451. The election must specify that the period (such as a calendar month) for which the qualified transportation fringe will be provided must not begin before the election is made. Thus, a compensation reduction election must relate to qualified transportation fringes to be provided after the election. For this purpose, the date a qualified transportation fringe is provided is—

(1) The date the employee receives a voucher or similar item; or

(2) In any other case, the date the employee uses the qualified transportation fringe.

(c) *Revocability of elections.* The employee may not revoke a compensation reduction election after the employee is able currently to receive the cash or other taxable amount at the employee's discretion. In addition, the election may not be revoked after the beginning of the period for which the qualified transportation fringe will be provided.

(d) *Compensation reduction amounts not refundable.* Unless an election is revoked in a manner consistent with paragraph (c) of this Q/A–14, an employee may not subsequently receive the compensation (in cash or any form other than by payment of a qualified transportation fringe under the employer's plan). Thus, an employer's qualified transportation fringe benefit plan may not provide that an employee who ceases to participate in the employer's qualified transportation fringe benefit plan (such as in the case of termination of employment) is entitled to receive a refund of the amount by which the employee's compensation reductions exceed the actual qualified transportation fringes provided to the employee by the employer.

(e) *Examples.* The following examples illustrate the principles of this Q/A–14:

*Example 1.* (i) Employer P maintains a qualified transportation fringe benefit arrangement during a year in which the statutory monthly limit is $100 for transportation in a commuter highway vehicle and transit passes (2002 or later) and $180 for qualified parking. Employees of P are paid cash compensation twice per month, with the payroll dates being the first and the fifteenth day of the month. Under P's arrangement, an employee is permitted to elect at any time before the first day of a month to reduce his or her compensation payable during that month in an amount up to the applicable statutory monthly limit ($100 if the employee elects coverage for transportation in a commuter highway vehicle or a mass transit pass, or $180 if the employee chooses qualified parking) in return for the right to receive qualified transportation fringes up to the amount of the election. If such an election is made, P will provide a mass transit pass for that month with a value not exceeding the compensation reduction amount elected by the employee or will reimburse the cost of other qualified transportation fringes used by the employee on or after the first day of that month up to the compensation reduction amount elected by the employee. Any compensation reduction amount elected by the employee for the month that is not used for qualified transportation fringes is not refunded to the employee at any future date.

(ii) In this *Example 1*, the arrangement satisfies the requirements of this Q/A–14 because the election is made before the employee is able currently to receive the cash and the election specifies the future period for which the qualified transportation fringes will be provided. The arrangement would also satisfy the requirements of this Q/A–14 and Q/A–13 of this section if employees are allowed to elect to reduce compensation up to $280 per month ($100 plus $180).

(iii) The arrangement would also satisfy the requirements of this Q/A–14 (and Q/A–13 of this section) if employees are allowed to make an election at any time before the first or the fifteenth day of the month to reduce their compensation payable on that payroll date by an amount not in excess of one-half of the applicable statutory monthly limit (depending on the type of qualified transportation fringe elected by the employee) and P provides a mass transit pass on or after the applicable payroll date for the compensation reduction amount elected by the employee for the payroll date or reimburses the cost of other qualified transportation fringes used by the employee on or after the payroll date up to the compensation reduction amount elected by the employee for that payroll date.

*Example 2.* (i) Employee Q elects to reduce his compensation payable on March 1 of a year (for which the statutory monthly mass transit limit is $65) by $195 in exchange for a mass transit voucher to be provided in March. The election is made on the preceding February 27. Employee Q was hired in January of the year. On March 10 of the year, the employer of Employee Q delivers to Employee Q a mass transit voucher worth $195 for the months of January, February, and March.

(ii) In this *Example 2*, $65 is included in Employee Q's wages for income and employment tax purposes because the compensation reduction election fails to satisfy the requirement in this Q/A–14 and Q/A–12 of this section that the period for which the qualified transportation fringe will be provided not begin before the election is made to the extent the election relates to $65 worth of transit passes for January of the year. The $65 for February is not taxable because the election was for a future period that includes at least one day in February.

(iii) However, no amount would be included in Employee Q's wages as a result of the election if $195 worth of mass transit passes were instead provided to Q for the months of February, March, and April (because the compensation reduction would relate solely to fringes to be provided for a period not beginning before the date of the election and the amount provided does not exceed the aggregate limit for the period, *i.e.*, the sum of $65 for each of February, March, and April). See Q/A–9 of this section for rules governing transit passes distributed in advance for more than one month.

*Example 3.* (i) Employee R elects to reduce his compensation payable on March 1 of a year (for which the statutory monthly parking limit is $175) by $185 in exchange for reimbursement by Employer T of parking expenses incurred by Employee R for parking on or near Employer T's business premises during the period beginning after the date of the election through March. The election is made on the preceding February 27. Employee R incurs $10 in parking expenses on February 28 of the year, and $175 in parking expenses during the month of March. On April 5 of the year, Employer T reimburses Employee R $185 for the parking expenses incurred on February 28, and during March, of the year.

(ii) In this *Example 3*, no amount would be includible in Employee R's wages for income and employment tax purposes because the compensation reduction related solely to parking on or near Employer R's business premises used during a period not beginning before the date of the election and the amount reimbursed for parking used in any one month does not exceed the statutory monthly limitation.

Q–15. May an employee whose qualified transportation fringe costs are less than the employee's compensation reduction carry over this excess amount to subsequent periods?

A–15. (a) Yes. An employee may carry over unused compensation reduction amounts to subsequent periods under the plan of the employee's employer.

(b) The following example illustrates the principles of this Q/A–15:

*Example.* (i) By an election made before November 1 of a year for which the statutory monthly mass transit limit is $65, Employee E elects to reduce compensation in the amount of $65 for the month of November. E incurs $50 in employee-operated commuter highway vehicle expenses during November for which E is reimbursed $50 by Employer R, E's employer. By an election made before December, E elects to reduce compensation by $65 for the month of December. E incurs $65 in employee-operated commuter highway vehicle expenses during December for which E is reimbursed $65 by R. Before the following January, E elects to reduce compensation by $50 for the month of January. E incurs $65 in employee-operated commuter highway vehicle expenses during January for which E is reimbursed $65 by R because R allows E to carry over to the next year the $15 amount by which the compensation reductions for November and December exceeded the employee-operated commuter highway vehicle expenses incurred during those months.

(ii) In this *Example,* because Employee E is reimbursed in an amount not exceeding the applicable statutory monthly limit, and the reimbursement does not exceed the amount of employee-operated commuter highway vehicle expenses incurred during the month of January, the amount reimbursed ($65) is excludable from E's wages for income and employment tax purposes.

Q–16. How does section 132(f) apply to expense reimbursements?

A–16. (a) *In general.* The term qualified transportation fringe includes cash reimbursement by an employer to an employee for expenses incurred or paid by an employee for transportation in a commuter highway vehicle or qualified parking. The term qualified transportation fringe also includes cash reimbursement for transit passes made under a bona fide reimbursement arrangement, but, in accordance with section 132(f)(3), only if permitted under paragraph (b) of this Q/A–16. The reimbursement must be made under a bona fide reimbursement arrangement which meets the rules of paragraph (c) of this Q/A–16. A payment made before the date an expense has been incurred or paid is not a reimbursement. In addition, a bona fide reimbursement arrangement does not include an arrangement that is dependent solely upon an employee certifying in advance that the employee will incur expenses at some future date.

(b) *Special rule for transit passes*—(1) *In general.* The term *qualified transportation fringe* includes cash reimbursement for transit passes made under a bona fide reimbursement arrangement, but, in accordance with section 132(f)(3), only if no voucher or similar item that may be exchanged only for a transit pass is readily available for direct distribution by the employer to employees. If a voucher is readily available, the requirement that a voucher be distributed in-kind by the employer is satisfied if the voucher is distributed by the employer or by another person on behalf of the employer (for example, if a transit operator credits amounts to the employee's fare card as a result of payments made to the operator by the employer).

(2) *Voucher or similar item.* For purposes of the special rule in paragraph (b) of this Q/A–16, a transit system voucher is an instrument that may be purchased by employers from a voucher provider that is accepted by one or more mass transit operators (e.g., train, subway, and bus) in an area as fare media or in exchange for fare media. Thus, for example, a transit pass that may be purchased by employers directly from a voucher provider is a transit system voucher.

(3) *Voucher provider.* The term voucher provider means any person in the trade or business of selling transit system vouchers to employers, or any transit system or transit operator that sells vouchers to employers for the purpose of direct distribution to employees. Thus, a transit operator might or might not be a voucher provider. A voucher provider is not, for example, a third-party employee benefits administrator that administers a transit pass benefit program for an employer using vouchers that the employer could obtain directly.

(4) *Readily available.* For purposes of this paragraph (b), a voucher or similar

item is readily available for direct distribution by the employer to employees if and only if an employer can obtain it from a voucher provider that—

(i) does not impose fare media charges that cause vouchers to not be readily available as described in paragraph (b)(5) of this section; and

(ii) does not impose other restrictions that cause vouchers to not be readily available as described in paragraph (b)(6) of this section.

(5) *Fare media charges.* For purposes of paragraph (b)(4) of this section, fare media charges relate only to fees paid by the employer to voucher providers for vouchers. The determination of whether obtaining a voucher would result in fare media charges that cause vouchers to not be readily available as described in this paragraph (b) is made with respect to each transit system voucher. If more than one transit system voucher is available for direct distribution to employees, the employer must consider the fees imposed for the lowest cost monthly voucher for purposes of determining whether the fees imposed by the voucher provider satisfy this paragraph. However, if transit system vouchers for multiple transit systems are required in an area to meet the transit needs of the individual employees in that area, the employer has the option of averaging the costs applied to each transit system voucher for purposes of determining whether the fare media charges for transit system vouchers satisfy this paragraph. Fare media charges are described in this paragraph (b)(5), and therefore cause vouchers to not be readily available, if and only if the average annual fare media charges that the employer reasonably expects to incur for transit system vouchers purchased from the voucher provider (disregarding reasonable and customary delivery charges imposed by the voucher provider, e.g., not in excess of $15) are more than 1 percent of the average annual value of the vouchers for a transit system.

(6) *Other restrictions.* For purposes of paragraph (b)(4) of this section, restrictions that cause vouchers to not be readily available are restrictions imposed by the voucher provider other than fare media charges that effectively prevent the employer from obtaining vouchers appropriate for distribution to employees. Examples of such restrictions include—

(i) *Advance purchase requirements.* Advance purchase requirements cause vouchers to not be readily available only if the voucher provider does not offer vouchers at regular intervals or fails to provide the voucher within a reasonable period after receiving payment for the voucher. For example, a requirement that vouchers may be purchased only once per year may effectively prevent an employer from obtaining vouchers for distribution to employees. An advance purchase requirement that vouchers be purchased not more frequently than monthly does not effectively prevent the employer from obtaining vouchers for distribution to employees.

(ii) *Purchase quantity requirements.* Purchase quantity requirements cause vouchers to not be readily available if the voucher provider does not offer vouchers in quantities that are reasonably appropriate to the number of the employer's employees who use mass transportation (for example, the voucher provider requires a $1,000 minimum purchase and the employer seeks to purchase only $200 of vouchers).

(iii) *Limitations on denominations of vouchers that are available.* If the voucher provider does not offer vouchers in denominations appropriate for distribution to the employer's employees, vouchers are not readily available. For example, vouchers provided in $5 increments up to the monthly limit are appropriate for distribution to employees, while vouchers available only in a denomination equal to the monthly limit are not appropriate for distribution to employees if the amount of the benefit provided to the employer's employees each month is normally less than the monthly limit.

(7) *Example.* The following example illustrates the principles of this paragraph (b):

*Example.* (i) Company C in City X sells mass transit vouchers to employers in the metropolitan area of X in various denominations appropriate for distribution to employees. Employers can purchase vouchers monthly in reasonably appropriate quantities. Several different bus, rail, van pool, and ferry operators service X, and a number of the operators accept the vouchers either as fare media or in exchange for fare media. To cover its operating expenses, C imposes on each voucher a 50 cents charge, plus a reasonable and customary $15 charge for delivery of each order of vouchers. Employer M disburses vouchers purchased from C to its employees who use operators that accept the vouchers and M reasonably expects that $55 is the average value of the voucher it will purchase from C for the next calendar year.

(ii) In this *Example*, vouchers for X are readily available for direct distribution by the employer to employees because the expected cost of the vouchers disbursed to M's employees for the next calendar year is not more than 1 percent of the value of the vouchers (50 cents divided by $55 equals 0.91 percent), the delivery charges are disregarded because they are reasonable and customary, and there are no other restrictions that cause the vouchers to not be readily available. Thus, any reimbursement of mass transportation costs in X would not be a qualified transportation fringe.

(c) *Substantiation requirements.* Employers that make cash reimbursements must establish a bona fide reimbursement arrangement to establish that their employees have, in fact, incurred expenses for transportation in a commuter highway vehicle, transit passes, or qualified parking. For purposes of section 132(f), whether cash reimbursements are made under a bona fide reimbursement arrangement may vary depending on the facts and circumstances, including the method or methods of payment utilized within the mass transit system. The employer must implement reasonable procedures to ensure that an amount equal to the reimbursement was incurred for transportation in a commuter highway vehicle, transit passes, or qualified parking. The expense must be substantiated within a reasonable period of time. An expense substantiated to the payor within 180 days after it has been paid will be treated as having been substantiated within a reasonable period of time. An employee certification at the time of reimbursement in either written or electronic form may be a reasonable reimbursement procedure depending on the facts and circumstances. Examples of reasonable reimbursement procedures are set forth in paragraph (d) of this Q/A–16.

(d) *Illustrations of reasonable reimbursement procedures.* The following are examples of reasonable reimbursement procedures for purposes of paragraph (c) of this Q/A–16. In each case, the reimbursement is made at or within a reasonable period after the end of the events described in paragraphs (d)(1) through (d)(3) of this section.

(1) An employee presents to the employer a parking expense receipt for parking on or near the employer's business premises, the employee certifies that the parking was used by the employee, and the employer has no reason to doubt the employee's certification.

(2) An employee either submits a used time-sensitive transit pass (such as a monthly pass) to the employer and certifies that he or she purchased it or presents an unused or used transit pass to the employer and certifies that he or she purchased it and the employee certifies that he or she has not previously been reimbursed for the transit pass. In both cases, the employer has no reason to doubt the employee's certification.

(3) If a receipt is not provided in the ordinary course of business (e.g., if the employee uses metered parking or if used transit passes cannot be returned to the user), the employee certifies to the employer the type and the amount of expenses incurred, and the employer has no reason to doubt the employee's certification.

Q–17. May an employer provide nontaxable cash reimbursement under section 132(f) for periods longer than one month?

A–17. (a) *General rule.* Yes. Qualified transportation fringes include reimbursement to employees for costs incurred for transportation in more than one month, provided the reimbursement for each month in the period is calculated separately and does not exceed the applicable statutory monthly limit for any month in the period. See Q/A–8 and 9 of this section if the limit for a month is exceeded.

(b) *Example.* The following example illustrates the principles of this Q/A–17:

*Example.* (i) Employee R pays $100 per month for qualified parking used during the period from April 1 through June 30 of a year in which the statutory monthly qualified parking limit is $175. After receiving adequate substantiation from Employee R, R's employer reimburses R $300 in cash on June 30 of that year.

(ii) In this *Example*, because the value of the reimbursed expenses for each month did not exceed the applicable statutory monthly limit, the $300 reimbursement is excludable from R's wages for income and employment tax purposes as a qualified transportation fringe.

Q–18. What are the substantiation requirements if an employer distributes transit passes?

A–18. There are no substantiation requirements if the employer distributes transit passes. Thus, an employer may distribute a transit pass for each month with a value not more than the statutory monthly limit without requiring any certification from the employee regarding the use of the transit pass.

Q–19. May an employer choose to impose substantiation requirements in addition to those described in this regulation?

A–19. Yes.

Q–20. How is the value of parking determined?

A–20. Section 1.61–21(b)(2) applies for purposes of determining the value of parking.

Q–21. How do the qualified transportation fringe rules apply to van pools?

A–21. (a) *Van pools generally.* Employer and employee-operated van pools, as well as private or public transit-operated van pools, may qualify as qualified transportation fringes. The value of van pool benefits which are qualified transportation fringes may be excluded up to the applicable statutory monthly limit for transportation in a commuter highway vehicle and transit passes, less the value of any transit passes provided by the employer for the month.

(b) *Employer-operated van pools.* The value of van pool transportation provided by or for an employer to its employees is excludable as a qualified transportation fringe, provided the van qualifies as a commuter highway vehicle as defined in section 132(f)(5)(B) and Q/A–2 of this section. A van pool is operated by or for the employer if the employer purchases or leases vans to enable employees to commute together or the employer contracts with and pays a third party to provide the vans and some or all of the costs of operating the vans, including maintenance, liability insurance and other operating expenses.

(c) *Employee-operated van pools.* Cash reimbursement by an employer to employees for expenses incurred for transportation in a van pool operated by employees independent of their employer are excludable as qualified transportation fringes, provided that the van qualifies as a commuter highway vehicle as defined in section 132(f)(5)(B) and Q/A–2 of this section. See Q/A–16 of this section for the rules governing cash reimbursements.

(d) *Private or public transit-operated van pool transit passes.* The qualified transportation fringe exclusion for transit passes is available for travel in van pools owned and operated either by public transit authorities or by any person in the business of transporting persons for compensation or hire. In accordance with paragraph (b) of Q/A–3 of this section, the van must seat at least 6 adults (excluding the driver). See Q/A–16(b) and (c) of this section for a special rule for cash reimbursement for transit passes and the substantiation requirements for cash reimbursement.

(e) *Value of van pool transportation benefits.* Section 1.61–21(b)(2) provides that the fair market value of a fringe benefit is based on all the facts and circumstances. Alternatively, transportation in an employer-provided commuter highway vehicle may be valued under the automobile lease valuation rule in §1.61–21(d), the vehicle cents-per-mile rule in §1.61–21(e), or the commuting valuation rule in §1.61–21(f). If one of these special valuation rules is used, the employer must use the same valuation rule to value the use of the commuter highway vehicle by each employee who share the use. See §1.61–21(c)(2)(i)(B).

(f) *Qualified parking prime member.* If an employee obtains a qualified parking space as a result of membership in a car or van pool, the applicable statutory monthly limit for qualified parking applies to the individual to whom the parking space is assigned. This individual is the prime member. In determining the tax consequences to the prime member, the statutory monthly limit amounts of each car pool member may not be combined. If the employer provides access to the space and the space is not assigned to a particular individual, then the employer must designate one of its employees as the prime member who will bear the tax consequences. The employer may not designate more than one prime member for a car or van pool during a month. The employer of the prime member is responsible for including the value of the qualified parking in excess of the statutory monthly limit in the prime member's wages for income and employment tax purposes.

Q–22. What are the reporting and employment tax requirements for qualified transportation fringes?

A–22. (a) *Employment tax treatment generally*. Qualified transportation fringes not exceeding the applicable statutory monthly limit described in Q/A–7 of this section are not wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding. Any amount by which an employee elects to reduce compensation as provided in Q/A–11 of this section is not subject to the FICA, the FUTA, and federal income tax withholding. Qualified transportation fringes exceeding the applicable statutory monthly limit described in Q/A–7 of this section are wages for purposes of the FICA, the FUTA, and federal income tax withholding and are reported on the employee's Form W-2, Wage and Tax Statement.

(b) *Employment tax treatment of cash reimbursement exceeding monthly limits.* Cash reimbursement to employees (for example, cash reimbursement for qualified parking) in excess of the applicable statutory monthly limit under section 132(f) is treated as paid for employment tax purposes when actually or constructively paid. See §§ 31.3121(a)–2(a), 31.3301–4, 31.3402(a)–1(b) of this chapter. Employers must report and deposit the amounts withheld in addition to reporting and depositing other employment taxes. See Q/A–16 of this section for rules governing cash reimbursements.

(c) *Noncash fringe benefits exceeding monthly limits.* If the value of noncash qualified transportation fringes exceeds the applicable statutory monthly limit, the employer may elect, for purposes of the FICA, the FUTA, and federal income tax withholding, to treat the noncash taxable fringe benefits as paid on a pay period, quarterly, semi-annual, annual, or other basis, provided that the benefits are treated as paid no less frequently than annually.

Q–23. How does section 132(f) interact with other fringe benefit rules?

A–23. For purposes of section 132, the terms working condition fringe and de minimis fringe do not include any qualified transportation fringe under section 132(f). If, however, an employer provides local transportation other than transit passes (without any direct or indirect compensation reduction election), the value of the benefit may be excludable, either totally or partially, under fringe benefit rules other than the qualified transportation fringe rules under section 132(f). See §§ 1.132–6(d)(2)(i) (occasional local transportation fare), 1.132–6(d)(2)(iii) (transportation provided under unusual circumstances), and 1.61–21(k) (valuation of local transportation provided to qualified employees). See also Q/A–4(b) of this section.

Q–24. May qualified transportation fringes be provided to individuals who are partners, 2-percent shareholders of S-corporations, or independent contractors?

A–24. (a) *General rule*. Section 132(f)(5)(E) states that self-employed individuals who are employees within the meaning of section 401(c)(1) are not employees for purposes of section 132(f). Therefore, individuals who are partners, sole proprietors, or other independent contractors are not employees for purposes of section 132(f). In addition, under section 1372(a), 2-percent shareholders of S corporations are treated as partners for fringe benefit purposes. Thus, an individual who is both a 2-percent shareholder of an S corporation and a common law employee of that S corporation is not considered an employee for purposes of section 132(f). However, while section 132(f) does not apply to individuals who are partners, 2-percent shareholders of S corporations, or independent contractors, other exclusions for working condition and de minimis fringes may be available as described in paragraphs

(b) and (c) of this Q/A–24. See §§1.132–1(b)(2) and 1.132–1(b)(4).

(b) *Transit passes.* The working condition and de minimis fringe exclusions under section 132(a)(3) and (4) are available for transit passes provided to individuals who are partners, 2-percent shareholders, and independent contractors. For example, tokens or farecards provided by a partnership to an individual who is a partner that enable the partner to commute on a public transit system (not including privately-operated van pools) are excludable from the partner's gross income if the value of the tokens and farecards in any month does not exceed the dollar amount specified in §1.132–6(d)(1). However, if the value of a pass provided in a month exceeds the dollar amount specified in §1.132–6(d)(1), the full value of the benefit provided (not merely the amount in excess of the dollar amount specified in §1.132–6(d)(1)) is includible in gross income.

(c) *Parking.* The working condition fringe rules under section 132(d) do not apply to commuter parking. See §1.132–5(a)(1). However, the de minimis fringe rules under section 132(e) are available for parking provided to individuals who are partners, 2-percent shareholders, or independent contractors that qualifies under the de minimis rules. See §1.132–6(a) and (b).

(d) *Example.* The following example illustrates the principles of this Q/A–24:

*Example.* (i) Individual G is a partner in partnership P. Individual G commutes to and from G's office every day and parks free of charge in P's lot.

(ii) In this *Example*, the value of the parking is not excluded under section 132(f), but may be excluded under section 132(e) if the parking is a de minimis fringe under §1.132–6.

Q–25. What is the effective date of this section?

A–25. (a) Except as provided in paragraph (b) of this Q/A–25, this section is applicable for employee taxable years beginning after December 31, 2001. For this purpose, an employer may assume that the employee taxable year is the calendar year.

(b) The last sentence of paragraph (b)(5) of Q/A–16 of this section (relating to whether transit system vouchers for transit passes are readily available) is applicable for employee taxable years beginning after December 31, 2003. For this purpose, an employer may assume that the employee taxable year is the calendar year.

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### § 1.133–1T Questions and answers relating to interest on certain loans used to acquire employer securities (temporary).

Q–1: What does section 133 provide?

A–1: In general, section 133 provides that certain commercial lenders may exclude from gross income fifty percent of the interest received with respect to securities acquisition loans. A securities acquisition loan is any loan to an employee stock ownership plan (ESOP) (as defined in section 4975(e)(7)) that qualifies as an exempt loan under §§54.4975–7 and –11 to the extent that the proceeds are used to acquire employer securities (within the meaning of section 409(l)) for the ESOP. A loan made to a corporation sponsoring an ESOP (or to a person related to such corporation under section 133(b)(2)) may also qualify as a securities acquisition loan to the extent and for the period that the proceeds are (a) loaned to the corporation's ESOP under a loan that qualifies as an exempt loan under §§54.4975–7 and –11 and that has substantially similar terms as the loan from the commercial lender to the sponsoring corporation, and (b) used to acquire employer securities for the ESOP. The terms of the loan between the commercial lender and the sponsoring corporation (or a related corporation) and the loan between such corporation and the ESOP shall be treated as substantially similar only if the timing and rate at which employer securities would be released from encumbrance if the loan from the commercial lender were the exempt loan under the applicable rule of §54.4975–7(b)(8) are substantially similar to the timing and rate at which employer securities will actually be released from encumbrance in accordance with such rule. For this purpose, if the loan from the commercial lender to the sponsoring corporation states a variable rate of interest and the loan between the corporation and the ESOP states a fixed rate of interest, whether the terms of the loans are substantially similar shall be determined at the time the obligations are initially issued by taking into account the adjustment interval on the variable rate loan and the maturity of the fixed rate loan. For example, if the rate on the loan from the commercial lender to the sponsoring corporation adjusts each six months and the loan from the corporation to the ESOP has a ten year term, the initial interest rate on the variable rate loan could be compared to the rate on the fixed rate loan by comparing the yields on 6 month and ten year Treasury obligations. Similarly, if the rates on the two loans are based on different compounding assumptions, whether the terms of the loans are substantially similar shall be determined by taking into account the different compounding assumptions. A securities acquisition loan may be evidenced by any note, bond, debenture, or certificate. Also, section 133(b)(2) provides that certain loans between related persons are not securities acquisition loans. In addition, a loan from a commercial lender to an ESOP or sponsoring corporation to purchase employer securities will not be treated as a securities acquisition loan to the extent that such loan is used, either directly or indirectly, to purchase employer securities from any other qualified plan, including any other ESOP, maintained by the employer or any other corporation which is a member of the same controlled group (as defined in section 409(1)(4)).

Q–2: What lenders are eligible to receive the fifty percent interest exclusion?

A–2: Under section 133(a), a bank (within the meaning of section 581), an insurance company to which subchapter L applies, or a corporation (other than a subchapter S corporation) actively engaged in the business of lending money may exclude from gross income fifty percent of the interest received with respect to a securities acquisition loan (as defined in Q&A–1 of §1.133–1T). For purposes of section 133(a)(3), a corporation is actively engaged in the business of lending money if it lends money to the public on a regular and continuing basis (other than in connection with the purchase by the public of goods and services from the lender or a related party). A corporation is not actively engaged in the business of lending money if a predominant share of the original value of the loans it makes to unrelated parties (other than in connection with the purchase by the public of goods and services from the lender or a related party) are securities acquisition loans.

Q–3: May loans which qualify for the fifty percent interest exclusion under section 133 be syndicated to other lending institutions?

A–3: Securities acquisition loans under section 133 may be syndicated to other lending institutions provided that such lending institutions are described in section 133(a) (1), (2) or (3) and the loan was originated by a qualified holder. Subsequent holders of the debt instrument may qualify for the partial interest exclusion of section 133 if such holders satisfy the requirements of section 133 and such loan does not fail to be a securities acquisition loan under section 133(b)(2).

Q–4: When is section 133 effective?

A–4: Section 133 applies to securities acquisition loans made after July 18, 1984, and used to acquire employer securities after July 18, 1984. The provision does not apply to loans made after July 18, 1984, to the extent that such loans are renegotiations, directly or indirectly, of loans outstanding on such date. A loan extended to an ESOP or sponsoring corporation after July 18, 1984, will be treated as a renegotiation of an outstanding loan if the loan proceeds are used to refinance acquisitions of employer securities made prior to July 19, 1984. For example, if an ESOP borrowed money prior to July 19, 1984, to purchase employer securities and after July 18, 1984, borrows other funds from the same or a different commercial lender to repay the first loan, the second loan will be treated as a renegotiation of an outstanding loan to the extent of the repaid amount. Similarly, if, after July 18, 1984, an ESOP sells employer securities, uses the proceeds to retire a pre-July 19, 1984, loan and obtains a second loan to acquire replacement employer securities, the second loan will be treated as a renegotiation of an outstanding loan.

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